

EXHIBIT 11

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
United States of America,) Hon. Patti Saris
ex rel. Ven-a-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
) Judge Patti B.
) Saris
State of Arizona v. Abbott)
Labs., et al.)
Civil Action No. 06-CV-11069-PBS)

ORAL AND VIDEOTAPED CONFIDENTIAL DEPOSITION OF

DAVID E. BRINCKS

JUNE 12, 2007

<p style="text-align: right;">Page 166</p> <p>1 A. I don't think when I was there that that</p> <p>2 capability was in place. I don't recall that when I</p> <p>3 left in '95.</p> <p>4 Q. You just recall the more kind of</p> <p>5 antiquated physical reference to the books?</p> <p>6 A. Pull out the book (indicating).</p> <p>7 Q. Was it your experience that Abbott had a</p> <p>8 subscription to both First Data Bank and Red Book</p> <p>9 publications?</p> <p>10 MS. CITERA: Objection to form.</p> <p>11 A. I had them and Abbott paid for them.</p> <p>12 Q. And it was -- It probably wasn't just you</p> <p>13 that had them, was it? Did other Abbott personnel</p> <p>14 have subscriptions to the books?</p> <p>15 A. Yeah. I would imagine they did, but I</p> <p>16 don't specifically recall who. I can't imagine that</p> <p>17 they didn't.</p> <p>18 Q. Right. Okay.</p> <p>19 Now looking at Page 2 of Exhibit 295,</p> <p>20 which is actually the third page. I think you're</p> <p>21 already there actually.</p> <p>22 A. Oh, Page 2?</p> <p>23 Q. Yes, sir, that block.</p> <p>24 And there's different services that Abbott</p> <p>25 offered to home infusion pharmacies and hospital</p>	<p style="text-align: right;">Page 168</p> <p>1 A. Uh-huh.</p> <p>2 Q. Does that jog your memory that there was</p> <p>3 some type of buying group that Abbott offered to home</p> <p>4 infusion clients to buy non-Abbott drugs?</p> <p>5 MS. CITERA: Objection to form.</p> <p>6 A. I don't -- You know -- And this again was</p> <p>7 after I left. So I don't know if there was some kind</p> <p>8 of a buying group relationship. I don't -- I don't</p> <p>9 recall.</p> <p>10 Q. Do you believe that the CHIP system was</p> <p>11 online and operational before you left the home</p> <p>12 infusion services group?</p> <p>13 A. Yes.</p> <p>14 Q. And do you recall that the CHIP system was</p> <p>15 utilized in the filing of reimbursement claims?</p> <p>16 A. Yes. I don't recall as to how extensively</p> <p>17 when I left, but I know it was -- it certainly was</p> <p>18 involved and had the capability.</p> <p>19 Q. And was that one of the primary reasons</p> <p>20 why the CHIP computer system was actually created?</p> <p>21 MS. CITERA: Objection to form.</p> <p>22 MR. ANDERSON: I'll rephrase to be more</p> <p>23 specific.</p> <p>24 BY MR. ANDERSON:</p> <p>25 Q. Sir, is it true that one of the reasons</p>
<p style="text-align: right;">Page 167</p> <p>1 clinics, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And the first one is reimbursement,</p> <p>4 correct?</p> <p>5 A. Uh-huh.</p> <p>6 MS. CITERA: Objection to form.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q. Then Abbott product, non-Abbott product</p> <p>9 and CHIP system, correct?</p> <p>10 A. Yes.</p> <p>11 Q. How did Abbott go about offering</p> <p>12 non-Abbott product to home infusion clients of</p> <p>13 Abbott's?</p> <p>14 A. I don't remember the details of how the</p> <p>15 pharmacy operation did that and I can't recall if it</p> <p>16 was simply in that one -- for clients that we</p> <p>17 compounded product for, because obviously we didn't</p> <p>18 make everything that you would need. So you would --</p> <p>19 They would have had to procure it, and I don't recall</p> <p>20 the specifics of how they did that, the mechanics.</p> <p>21 Q. I'll read -- And maybe this will refresh</p> <p>22 your memory. Next to non-Abbott product, there's a</p> <p>23 statement that I'll read for the record. Quote, Care</p> <p>24 Partners will be able to join a nationwide buying</p> <p>25 group at no cost. Did I read that correctly?</p>	<p style="text-align: right;">Page 169</p> <p>1 why Abbott went to the trouble of creating the CHIP</p> <p>2 computer system was to assist pharmacies in filing</p> <p>3 reimbursement claims?</p> <p>4 MS. CITERA: Objection to form.</p> <p>5 A. I don't recall the specific motivation,</p> <p>6 but clearly it was an area that they requested and</p> <p>7 were looking for help.</p> <p>8 Q. And when you say --</p> <p>9 A. The clients.</p> <p>10 Q. -- "it," you mean the reimbursement</p> <p>11 submissions?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. Now, looking at what's titled as</p> <p>14 the third page -- it's actually the fourth page of</p> <p>15 Exhibit 295. Were you ever involved or aware of any</p> <p>16 training that home infusion provided to clients</p> <p>17 concerning reimbursement?</p> <p>18 MS. CITERA: Objection to form.</p> <p>19 A. I -- I know that Virginia and her team did</p> <p>20 some. I don't -- I don't remember specific details</p> <p>21 of it.</p> <p>22 Q. And when you say "Virginia," just so the</p> <p>23 record is clear, you're talking about Virginia</p> <p>24 Tobiason, correct?</p> <p>25 A. Correct.</p>

43 (Pages 166 to 169)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

CERTIFICATE

The amount of time used by each party at the deposition is as follows:

MS. ST. PETER-GRIFFITH - 2 HRS: 28 MIN

MR. ANDERSON - 2 HRS: 55 MIN

MS. CITERA - 9 MIN

State of Ohio :
SS:

County of Franklin:

I, Jody M. Theado, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the within-named DAVID E. BRINCKS was by me duly sworn to testify to the whole truth in the cause aforesaid; that the testimony was taken down by me in stenotype in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony given by said witness taken at the time and place in the foregoing caption specified.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have set my hand and affixed my seal of office at Columbus, Ohio, on this 19th day of June 2007.

JODY M. THEADO, Notary Public
in and for the State of Ohio
and Professional Court
Reporter.

My Commission expires January 5, 2009.

EXHIBIT 12

Cannon, Robert

February 26, 2008

Orlando, FL

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X

IN RE: PHARMACEUTICAL)

INDUSTRY AVERAGE WHOLESALE)

PRICE LITIGATION)

-----X

THIS DOCUMENT RELATES TO:)

State of California, ex rel.)

Ven-A-Care v. Abbott)

Laboratories, Inc., et al.)

CASE #: 1:03-cv-11226-PBS)

-----X

VIDEOTAPED DEPOSITION OF ROBERT CANNON

Taken on Behalf of the U.S. Department of Justice

Volume I

DATE TAKEN February 26, 2008

TIME: 9:10 a.m. - 6:20 p.m.

PLACE: Orlando, Florida 32801

Stenographically Reported by:

Soon Britt

Court Reporter and Notary Public

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

881e5aa9-9b10-4d6f-98c2-24a7ef7f1d17

Cannon, Robert

February 26, 2008

Orlando, FL

Page 390	Page 392
<p>1 Q. Well, what is -- what do you understand 2 the manufacturer data is that's referenced in 3 that paragraph? 4 A. (Reading document.) I -- I guess, 5 based -- the interpretation is First DataBank is 6 just going to use prices provided by the 7 investigators instead of the manufacturers. 8 Q. Right. Did you understand that 9 manufacturers provided prices to First DataBank? 10 A. Based upon this, yes. 11 Q. Does that refresh your memory that over 12 the years, you and others at Abbott knew that 13 manufacturers reported prices to First DataBank? 14 MS. GEISLER: Objection to form. 15 A. I believe so. 16 Q. Why do you make drug manufacturers 17 report prices to First DataBank? 18 A. I have no clue. I -- I'd have to go 19 back -- 20 Q. What prices did Abbott report to First 21 DataBank? 22 A. I don't know.</p>	<p>1 connection or input into the publication of AWP 2 on Abbott drugs? 3 MS. GEISLER: Objection to form. 4 A. No. 5 Q. Did you have any -- what was your 6 understanding of how the AWP's for Abbott products 7 were published? 8 A. I -- again, I was just under -- you 9 know, just under the assumption they sent the 10 information and Red Book developed the AWP and 11 was told to tell the customer, go to Red Book. 12 Q. Did you find over the years that the 13 AWP's on Abbott's fluids or injectable products 14 exceeded the prices that you sold those products 15 to customers for by anywhere from 500 to a 16 thousand percent? 17 A. I -- I wasn't privy to that 18 information. I only did con- -- contracting on - 19 - on those products. 20 Q. I -- I understand that, sir. But did - 21 - but did you have an awareness that the AWP's 22 significantly exceeded the market prices?</p>
Page 391	Page 393
<p>1 Q. Did -- do you know that Abbott reported 2 prices to Red Book? 3 A. I was informed that they supplied 4 information to Red Book. 5 Q. Did you understand that information 6 provided by Abbott to Red Book and First DataBank 7 led to the publication of AWP on Abbott products? 8 MS. GEISLER: Objection to form. 9 A. I was just told they submitted it. And 10 then if I was asked about AWP, to tell them to go 11 back to Red Book. 12 Q. Yes, sir. I understand your prior 13 testimony on that. But I'm asking: Did you 14 understand that pricing information published by 15 Abbott to First DataBank and Red Book led to the 16 publication of AWP on Abbott drugs? 17 MS. GEISLER: Objection to form. 18 A. No. 19 Q. Did you understand that Abbott had any 20 role whatsoever in the publication of AWP? 21 A. No. 22 Q. Did you understand if Abbott had any</p>	<p>1 A. No. 2 Q. You never looked at the AWP's at all? 3 A. No. 4 Q. When you wrote this e-mail back in May 5 of 2000, did you gain an understanding that the 6 AWP's had previously been high? 7 MS. GEISLER: Objection to form. 8 A. I think my understanding, based upon 9 that for the customer, was that he was going to 10 lose business. 11 MR. ANDERSON: Objection, 12 nonresponsive. 13 BY MR. ANDERSON: 14 Q. I understand the -- what the customer 15 was telling, sir. 16 I'm asking: Did you have an 17 understanding that prior to this decrease in the 18 AWP's in May of 2000, that the AWP's on some Abbott 19 products had been high? 20 A. No. 21 Q. How did you rectify the fact that they 22 had come down?</p>

99 (Pages 390 to 393)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cannon, Robert

February 26, 2008

Orlando, FL

<p style="text-align: right;">Page 482</p> <p>1 does that sound familiar?</p> <p>2 A. Just from what was earlier from that</p> <p>3 one document.</p> <p>4 Q. In your time at Abbott, do you have any</p> <p>5 familiarity with the term "seating program"?</p> <p>6 A. No.</p> <p>7 Q. How did you win sales rep of the year</p> <p>8 for ProHealth? I believe you testified earlier</p> <p>9 to --</p> <p>10 A. At Priority Healthcare.</p> <p>11 Q. Priority Healthcare?</p> <p>12 A. Manufacturer of the year. The</p> <p>13 manufacturer of the year.</p> <p>14 Q. And what was the award?</p> <p>15 A. Priority Healthcare not only gave</p> <p>16 awards to their internal salespeople, but then</p> <p>17 they also gave awards to their partners. And so</p> <p>18 I won as their "Manufacturer of the Year" for all</p> <p>19 the due diligence and everything I'd done for</p> <p>20 them.</p> <p>21 Q. So that was Priority Health's award?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 484</p> <p>1 designated, will you provide the bases for those</p> <p>2 designations?</p> <p>3 MS. GEISLER: All of the designations</p> <p>4 that I just mentioned refer to personal</p> <p>5 information relating to the witness. That's the</p> <p>6 information we're going to mark confidential.</p> <p>7 That has nothing to do with Judge Saris' order.</p> <p>8 MS. STRAWN: Gentlemen on the phone, is</p> <p>9 there anything else? I intend to --</p> <p>10 MR. ANDERSON: Well, nothing here.</p> <p>11 MR. SISNERO: Nothing here.</p> <p>12 MS. STRAWN: I guess as -- as a</p> <p>13 standard procedure, we'll keep the deposition</p> <p>14 open. My -- my intention is that I -- I've asked</p> <p>15 the questions I wanted to ask, but Abbott is</p> <p>16 continuing to produce more documents. And so it</p> <p>17 may be necessary, but it's not our -- my current</p> <p>18 intention to -- to recall you at all.</p> <p>19 THE WITNESS: Okay. Thank you.</p> <p>20 THE VIDEOGRAPHER: We're off the video</p> <p>21 record.</p> <p>22 (Deposition concluded at 6:20</p>
<p style="text-align: right;">Page 483</p> <p>1 Q. That was -- was not an Abbott award?</p> <p>2 A. No. Priority.</p> <p>3 MS. STRAWN: All right. Well, I'm just</p> <p>4 in time. Did you want to put anything else on</p> <p>5 the record?</p> <p>6 MS. GEISLER: There's a couple of spots</p> <p>7 in the -- in the transcript that we're going to</p> <p>8 designate as confidential that refer -- there was</p> <p>9 an -- a spot around 9:15 this morning and another</p> <p>10 spot around 10:15 and then another one around</p> <p>11 10:40, which are -- include Mr. Cannon's personal</p> <p>12 information.</p> <p>13 Once we get the transcript, we'll</p> <p>14 designate those specific lines as confidential.</p> <p>15 MS. STRAWN: Okay. I want to go ahead</p> <p>16 and put on the record now that -- that Judge</p> <p>17 Saris has already issued four separate orders</p> <p>18 expressing concerns about improper designation of</p> <p>19 materials as confidential and -- and highly</p> <p>20 confidential, and so -- and -- and even</p> <p>21 frivolous. And so I guess, will you provide --</p> <p>22 when you provide the sections that you want to be</p>	<p style="text-align: right;">Page 485</p> <p>1 p.m.)</p> <p>2</p> <p>3</p> <p>4 STIPULATIONS</p> <p>5</p> <p>6 IT WAS STIPULATED BETWEEN counsel for the</p> <p>7 respective parties, with the consent of the witness,</p> <p>8 that reading and signing of the foregoing deposition by</p> <p>9 the witness will be reserved.</p> <p>10 THEREUPON, the videotaped deposition of ROBERT</p> <p>11 CANNON, taken at the instance of the United States</p> <p>12 Department of Justice, was concluded at 6:20 p.m.</p> <p>13</p> <p>14</p> <p>15</p> <p>16 ROBERT CANNON</p> <p>17 Subscribed and sworn to and before me</p> <p>18 this _____ day of _____, 20____.</p> <p>19</p> <p>20</p> <p>21</p> <p>22 Notary Public</p>

122 (Pages 482 to 485)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cannon, Robert

February 26, 2008

Orlando, FL

Page 486

1 REPORTER'S VIDEOTAPED DEPOSITION CERTIFICATE

2 STATE OF FLORIDA

3 COUNTY OF ORANGE

4 I, Soon Britt, Shorthand Reporter and

5 Notary Public in and for the State of Florida at large,

6 hereby certify that the witness appeared before me for

7 the taking of the foregoing deposition, and that I was

8 authorized to and did stenographically and

9 electronically report the deposition, and that the

10 transcript is a true and complete record of my

11 stenographic notes and recordings thereof.

12 I FURTHER CERTIFY that I am neither an

13 attorney nor counsel for the parties to this cause, nor

14 a relative or employee of any attorney or party

15 connected with this litigation, nor am I financially

16 interested in the outcome of this action.

17 DATED THIS _____, at Orlando,

18 Orange County, Florida.

19

20

21 _____
22 Soon Britt, Court Reporter

123 (Page 486)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

EXHIBIT 13

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
United States of America,) Hon. Patti Saris
ex rel. Ven-a-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
) Judge Patti B. Saris
State of Arizona v. Abbott)
Labs., et al.)
Civil Action No. 06-CV-11069-PBS)

ORAL AND VIDEOTAPED DEPOSITION OF

JERALDINE CICERALE

May 30, 2007

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

36182266-7c50-47fe-9423-7b2843292aab

<p style="text-align: right;">Page 14</p> <p>1 duties -- of the general titles of the functions that 2 you had at Abbott? 3 A. Yes, that's correct. 4 Q. Okay. What's an R/D Secretary? 5 A. Research and development secretary. I worked 6 in the -- that area for 18 different engineers and 7 scientists. 8 Q. Okay. And was that -- what division was that 9 R/D Secretary position in? 10 A. That was Hospital Products. 11 Q. At all times that you worked at Abbott, all 12 25 years, were you an employee of the Hospital 13 Products Division? 14 A. Yes. 15 Q. And if I refer to that as HPD, is that okay 16 with you? We have the understanding that means 17 Hospital Products Division? 18 A. Yes. 19 Q. Okay. And at all times when you were an 20 employee of HPD, did you work in the Hospital Business 21 Sector? 22 A. Yes. 23 Q. Okay. And did you generally understand that 24 Abbott's HPD had two business units, the Hospital 25 Business Sector, which was sometimes referred to as</p>	<p style="text-align: right;">Page 16</p> <p>1 them? 2 A. From what I recall, yes. 3 Q. What is a Catalog Specialist Assistant? 4 A. Are you asking me what my job function was? 5 Q. Yes, ma'am. 6 A. I put together catalogs to send out to the 7 customers, and then I also would put the list price, 8 the wholesale price and government price into our 9 computer system, which was at the time called OPS. 10 And then I would put new products in that database and 11 update them when there were price changes. 12 Q. And that was the function that you had as a 13 Catalog Specialist Assistant? 14 A. Yes. 15 Q. Okay. How did your job change when you 16 transitioned from being a Catalog Specialist Assistant 17 to a Master Database Coordinator in or about May of 18 1976? 19 A. Well, we had an internal department database, 20 which was just used by our Contract Marketing 21 Department, and that -- I would also add products to 22 that and keep up the pricing on it, the list pricing, 23 and send out -- when I got updates, I'd send out 24 the notif- -- you know, the different updates to 25 department people and enter that information into that</p>
<p style="text-align: right;">Page 15</p> <p>1 HBS, and then the Alternate Site Business Sector? 2 A. Yes. 3 Q. Okay. And did you know the difference 4 between the two business sectors, HPD -- HBS and 5 Alternate Site? 6 A. Well, I knew what HBS was. 7 Q. What was HBS? 8 A. The hospital products. We dealt with 9 hospital products. 10 Q. Who did Abbott sell its hospital products to? 11 A. Hospitals. 12 Q. Who did the Alternate Site Business Sector 13 sell their products to? 14 MR. COLE: Object to the form. 15 A. I don't know. I didn't work in that area. 16 Q. (BY MR. WINTER) Did you have interaction 17 with the Alternate Site Business Sector? 18 A. Not really. 19 Q. You never had interaction with Tena Brown or 20 Michael Heggie? 21 MR. COLE: Object to the form. 22 A. Other than -- no, not really. Just sending 23 catalogs to them. 24 Q. (BY MR. WINTER) Your sole interaction with 25 Tena Brown and Michael Heggie was to send catalogs to</p>	<p style="text-align: right;">Page 17</p> <p>1 internal database, which the department used for 2 using -- writing contracts. 3 Q. When you refer to "the department," are you 4 referring to the Hospital Products Division Contract 5 Marketing Department? 6 A. Correct. 7 Q. And who was in charge of the Hospital 8 Products Division Contract Marketing Department when 9 you first started working there? 10 A. There were many of them. Are you talking 11 about the director, the person that -- the highest? 12 Q. Who was -- what was the -- well, let's start 13 with the organization. 14 What was the name of the person who was 15 in charge of the Hospital Products Division Contract 16 Marketing Department? Was that a director position? 17 A. Right. 18 Q. Okay. 19 A. Correct. 20 Q. Is that the organization that you went to 21 work for in May of 1976? 22 A. Right. Correct. 23 Q. Prior to May of 1976, were you in a different 24 organization besides Contract Marketing? 25 A. Yes. I was in the HPD Marketing Department.</p>

5 (Pages 14 to 17)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

Page 58

1 A. No.
 2 Q. Did the resource file that you had
 3 responsibility for updating and maintaining include
 4 markers for parameter pricing?
 5 A. No.
 6 Q. Were there any other price points that you
 7 recall maintaining or updating besides list price,
 8 wholesale price and government price?
 9 A. No.
 10 Q. Now, is it true that from time to time you
 11 also had responsibility to communicate certain pricing
 12 points to not only the people who published the
 13 catalog but also to external publishing houses known
 14 as --
 15 A. Correct.
 16 Q. -- price compendia?
 17 A. Pardon me?
 18 Q. You're familiar with the term --
 19 A. Yes.
 20 Q. -- phrase "price reporting compendia"?
 21 A. Well, I'm not familiar with that term.
 22 Q. Okay. What -- do you know what First
 23 DataBank is?
 24 A. Yes.
 25 Q. Okay. And you're familiar with Medi-Span?

Page 59

1 A. Yes.
 2 Q. Okay. And Redbook?
 3 A. Correct.
 4 Q. Okay. What -- what's your phrase, what's
 5 your terminology for those three companies?
 6 MR. COLE: Object to the form.
 7 A. I just -- they were outside companies that
 8 published our --
 9 Q. (BY MR. WINTER) Price publish --
 10 A. -- our -- our list prices and that.
 11 Q. I just want to use some language you're
 12 familiar with. So would you call them the
 13 price-publishing companies?
 14 A. Yes.
 15 Q. Okay. So from 1976 all the way through
 16 December, 2003, did you have the responsibility of
 17 reporting to the price-publishing companies?
 18 A. I don't know if it was that long. I don't
 19 think in 1976 I did things like that.
 20 Q. In -- in the middle 1980s, were you
 21 responsible for reporting Abbott's prices to the
 22 price-publishing companies?
 23 A. I could have been.
 24 Q. Certainly as early as the early 1990s
 25 until --

Page 60

1 A. Correct.
 2 Q. -- you left in December, 2003, you had that
 3 duty, correct?
 4 A. Right.
 5 Q. Okay. What was the information that you
 6 would transmit to the price-publishing companies?
 7 A. I would give them pretty much what I fed into
 8 OPS, which would be the list price, the wholesale
 9 price, the product description, the NDC number and the
 10 case size.
 11 Q. So it was essentially the same information
 12 that you fed into OPS via the CPP, correct?
 13 A. What was that?
 14 Q. The infor- -- you said you -- your answer
 15 just a minute ago was I gave the price-publishing
 16 companies pretty much the same thing that I gave --
 17 that I fed into OPS, correct?
 18 A. Correct.
 19 Q. Okay. And the way you fed information to OPS
 20 was via your memo to Bruce Stowell or your e-mail to
 21 Bruce Stowell, and he would update the CPP, correct?
 22 A. Correct.
 23 Q. And then the CPP had a -- had a feed to OPS?
 24 A. Correct.
 25 Q. Okay. Is that the only way that you fed

Page 61

1 information to OPS?
 2 A. Yes.
 3 Q. There was no direct link between your
 4 database and OPS, correct?
 5 A. No, there was no...
 6 Q. Okay. But essentially the same information
 7 that you would transmit from time to time to
 8 Mr. Stowell that he would download to CPP and then
 9 feed to OPS you would provide from time to time to the
 10 price-publishing companies?
 11 A. Correct.
 12 Q. Okay. And that came -- did you provide it to
 13 them electronically; did you send them spreadsheets?
 14 How would you do that?
 15 A. Well, towards the latter years it was through
 16 e-mail. Prior to that, it was either a fax or through
 17 the mail.
 18 Q. Was there a form that you created on your own
 19 that you would fill out and submit to the
 20 price-publishing services or did you fill out a form
 21 that they gave you?
 22 MR. COLE: Object to the form.
 23 A. I would just basically give them those -- you
 24 know, those four or five fields. Say here's a new
 25 product. Here's the list price; wholesale price;

16 (Pages 58 to 61)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

Page 62

1 product description.
 2 Q. (BY MR. WINTER) So you would do --
 3 A. And the introduction date, you know, when we
 4 put it in our system.
 5 Q. So you're specifically referring now to a new
 6 product launch, correct?
 7 A. Correct.
 8 Q. Okay. You've testified this morning about
 9 the fact that Abbott took an annual price increase,
 10 correct?
 11 A. Correct.
 12 Q. Okay. What prices were increased annually?
 13 A. The list price, and then -- sometimes at the
 14 same time the wholesale price, but sometimes that was
 15 at a different time.
 16 Q. Was the government price increased annually?
 17 A. Yeah, but that was handled by the government
 18 area.
 19 Q. Do you know why Abbott took a list price
 20 increase on an annual basis?
 21 A. No.
 22 Q. These annual price increases would be across
 23 the board for all the HPD products, correct?
 24 A. Correct.
 25 Q. Okay. When you had a massive amount of

Page 63

1 products to update such as with an annual price
 2 increase, how did you transmit that information to the
 3 price-reporting services?
 4 A. I think -- towards the end I gave them a
 5 spreadsheet, an Excel spreadsheet, but prior to that
 6 it would just be, you know, the catalog. Send them
 7 the catalog, and so here is our new products, our new
 8 prices.
 9 Q. So sometimes you would just physically mail
 10 them a bound catalog?
 11 A. Correct.
 12 Q. And that's what you did in the early days
 13 before you had the capability to transmit the
 14 information electronically?
 15 A. Correct.
 16 Q. How many different catalogs did Abbott have?
 17 A. Well, HPD had the list price catalog, the
 18 wholesale catalog and then the federal government
 19 catalog.
 20 Q. Have you ever heard a catalog described as a,
 21 quote, "customer catalog"?
 22 A. Yeah, I've heard that term.
 23 Q. What would that mean to you?
 24 A. To me, I would interpret that as being a list
 25 price catalog.

Page 64

1 Q. And would that catalog house or contain the
 2 same list prices that you and I have been talking
 3 about this morning, the ones that you got from the
 4 marketing managers that you'd input into the internal
 5 database?
 6 A. Yes.
 7 MR. COLE: Object to the form.
 8 Q. (BY MR. WINTER) Those are the same list
 9 prices that were increased annually?
 10 A. Yes.
 11 Q. Okay. And those are the same list prices
 12 that you don't have any idea whether anybody actually
 13 bought product at those list prices, right?
 14 A. Correct.
 15 MR. COLE: Object to the form.
 16 Q. (BY MR. WINTER) The wholesaler catalog,
 17 would it include the wholesale prices that you have
 18 referred to?
 19 A. Correct.
 20 Q. Did it also include WAC prices?
 21 A. No.
 22 Q. Have you ever heard of a catalog described as
 23 a field catalog?
 24 A. Yes. It would be probably a sales rep
 25 catalog.

Page 65

1 Q. A sales rep catalog. Okay. Is that the same
 2 as either the wholesaler catalog or the -- or the
 3 customer catalog, or is that a different catalog?
 4 A. That's a different one, but that -- you know,
 5 that was years ago. They discontinued making that
 6 one.
 7 Q. When?
 8 A. I don't know what year it was.
 9 Q. Well, do you -- do you think that Abbott
 10 still -- is it your recollection that Abbott still had
 11 field sales rep catalogs in the middle 1990s, say
 12 1995?
 13 A. I can't be sure.
 14 Q. Is it your best recollection and your sense
 15 that they had phased it out prior to that?
 16 A. I can't be sure on the date.
 17 Q. What information was included in a sales rep
 18 catalog?
 19 A. It was just a small version of the list price
 20 catalog. It was a little pocket one so they could
 21 carry it, you know, when they did their sales calls or
 22 whatever.
 23 Q. So it had the same information, the list
 24 prices; it was just in a reduced format so it was
 25 easier to carry around?

17 (Pages 62 to 65)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

36182266-7c50-47fe-9423-7b2843292aa

<p style="text-align: right;">Page 86</p> <p>1 Q. And there are three attachments?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And do you see that the third one to the far</p> <p>4 right there says "AWP.TXT"?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Do you recall maintaining on the</p> <p>7 database that you had responsibility for a file or a</p> <p>8 compilation of data known as AWP or AWP text files?</p> <p>9 A. No, I didn't have a file -- a field called</p> <p>10 AWP.</p> <p>11 Q. Where did you --</p> <p>12 A. I had a field called wholesale price.</p> <p>13 Q. Where did you get the information that you</p> <p>14 utilized to create the AWP text file that you</p> <p>15 submitted to Roni Lane?</p> <p>16 A. I took it from that HPD products file,</p> <p>17 database, and it was the wholesale price that I sent</p> <p>18 to her.</p> <p>19 Q. So it's your testimony that when you provided</p> <p>20 information for Roni on or about April 23rd, 1996, and</p> <p>21 you transmitted it under a file that you called the</p> <p>22 AWP text file, that what you were providing her was</p> <p>23 the same information that you maintained in your</p> <p>24 databases in your wholesaler -- wholesale price --</p> <p>25 A. Field.</p>	<p style="text-align: right;">Page 88</p> <p>1 And we talked about that column that</p> <p>2 says "Wholesale," right?</p> <p>3 A. Correct.</p> <p>4 Q. And this is an example of where Abbott is</p> <p>5 representing to a price-publishing company the price</p> <p>6 at which Abbott sells to wholesalers, right?</p> <p>7 A. Correct.</p> <p>8 Q. And is that the same as the WAC price?</p> <p>9 MR. COLE: Object to the form.</p> <p>10 A. That I don't know.</p> <p>11 Q. (BY MR. WINTER) You stated in response to</p> <p>12 one of my questions earlier that you didn't believe or</p> <p>13 you didn't -- I don't think you used the word</p> <p>14 "believe." You just stated as a matter of fact that</p> <p>15 you did not receive AWP information from Redbook ever,</p> <p>16 correct?</p> <p>17 A. I received what they published in their</p> <p>18 publications.</p> <p>19 Q. And did you receive AWP information from</p> <p>20 Redbook?</p> <p>21 A. I don't remember what the columns were in</p> <p>22 their books, what they were labeled.</p> <p>23 Q. Well, does looking at Exhibit 926 refresh</p> <p>24 your recollection that among other things Redbook</p> <p>25 published AWP for Abbott drugs?</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. -- field?</p> <p>2 A. Yes.</p> <p>3 Q. Why is it that you believe when she was</p> <p>4 asking for AWP information that what she wanted from</p> <p>5 you was information that you called wholesale?</p> <p>6 A. Because the only fields I ever sent to the</p> <p>7 databanks was the list price and the wholesale price.</p> <p>8 I never sent them any other kind of prices.</p> <p>9 Q. So in your understanding and in Abbott's</p> <p>10 language, "AWP" means the wholesale price that was</p> <p>11 charged by Abbott to wholesalers?</p> <p>12 MR. COLE: Object to the form.</p> <p>13 A. Yes.</p> <p>14 Q. (BY MR. WINTER) So is it your belief then</p> <p>15 that AWP and wholesale price are synonymous?</p> <p>16 A. Yes.</p> <p>17 MR. COLE: Object to the form.</p> <p>18 Q. (BY MR. WINTER) Do you believe that AWP and</p> <p>19 wholesale price are also synonymous with the phrase</p> <p>20 WAC?</p> <p>21 MR. COLE: Object to the form.</p> <p>22 A. That I don't know.</p> <p>23 Q. (BY MR. WINTER) Let's go back and look at</p> <p>24 Exhibit 920 for a second, the one we just got through</p> <p>25 looking at. Page 2.</p>	<p style="text-align: right;">Page 89</p> <p>1 MR. COLE: Object to the form.</p> <p>2 A. Well, it looks like it from this memo.</p> <p>3 Q. (BY MR. WINTER) Okay. So is your</p> <p>4 recollection now, your memory, refreshed that Redbook</p> <p>5 did, in fact, publish AWP information on Abbott drugs,</p> <p>6 and from time to time Roni Lane would submit that to</p> <p>7 you and ask you to look at it and verify its accuracy?</p> <p>8 MR. COLE: Object to the form.</p> <p>9 A. Yes.</p> <p>10 Q. (BY MR. WINTER) Okay. So you just were a</p> <p>11 little fuzzy on your memory this morning when you</p> <p>12 testified that you never looked at AWP information</p> <p>13 from Redbook? Your recollection now --</p> <p>14 A. Well, AWP to me is the wholesale price, the</p> <p>15 direct wholesale price, which was all the fields that</p> <p>16 I've always updated.</p> <p>17 Q. Do you believe that Redbook used "AWP"</p> <p>18 synonymously with "wholesale price"?</p> <p>19 MR. COLE: Object to the form.</p> <p>20 A. I don't know that.</p> <p>21 Q. (BY MR. WINTER) Okay. Earlier you testified</p> <p>22 that you never looked at any AWP information that was</p> <p>23 submitted on Abbott drugs back to you by Redbook, but</p> <p>24 now after looking at Exhibit 926, your memory is</p> <p>25 refreshed and that earlier testimony that you gave, it</p>

23 (Pages 86 to 89)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

Page 134

1 Q. Okay. But you would look physically at your
2 printed catalog? You wouldn't look at your own
3 computer database?
4 A. No.
5 Q. What if there had been a price change that
6 had taken effect in the middle of the year?
7 A. Well, this must have been one of them.
8 Q. But if you were looking at your catalog, what
9 would be printed in the catalog would be whatever the
10 change -- the price was before the change, right?
11 A. Well, I might have printed the list prices
12 out of the computer.
13 Q. Okay. So it might not have been the catalog.
14 A. Yeah.
15 Q. You might have printed a current listing of
16 the pricing that you carried on your computer, and you
17 might have been looking at that?
18 A. Right.
19 Q. Okay. So if that's the case, then whatever
20 you had on your computer was updated on a daily basis,
21 right?
22 A. Right.
23 Q. So you should have the most current and
24 accurate and complete, truthful information on your
25 computer, right?

Page 135

1 A. Right.
2 Q. Okay.
3 MR. COLE: Object to the form.
4 Q. (BY MR. WINTER) So that would have been your
5 process. You would have taken what they sent you, and
6 you just would have gone page by page and done a
7 comparison?
8 A. Correct.
9 Q. Okay. Would your computer tell you that
10 there had been a change to the dextrose -- if you
11 were -- if you were undertaking this process in or
12 about October of 2002 -- let me ask you this: Is
13 that -- is that a fair assumption --
14 A. Yes.
15 Q. -- based upon the date of the document, that
16 you would have been doing this comparison process in
17 or around October --
18 A. Sometime in October, yes.
19 Q. Okay. And if you were looking at your print
20 of the most current, updated, accurate and truthful
21 information from your database, would it tell you that
22 there had been a price change on May 7, '02, on the
23 dextrose?
24 A. It would have had a different price.
25 Q. Would it have the effective date of the

Page 136

1 change or is that something you would have had to go
2 to some other source to find?
3 A. I probably would have had to gone to another
4 source.
5 Q. Would -- would you be accessing your resource
6 file for a particular drug in order to generate this
7 list or could you just --
8 A. No. From that HPD product catalog or product
9 file.
10 Q. HPD product file?
11 A. Yeah.
12 Q. Okay. Was --
13 A. The internal one.
14 Q. Was that the name of the file for all the
15 list prices and all the wholesale prices?
16 A. That was the internal, you know, department
17 file.
18 Q. The internal department file, the actual file
19 that was maintained --
20 A. Database.
21 Q. Okay. A database includes multiple files,
22 right?
23 A. Multiple -- this one had multiple fields.
24 Q. Okay.
25 A. It could have had a hundred different fields

Page 137

1 in it.
2 Q. Okay. What -- what other pricing points were
3 included -- what other pricing fields were included
4 besides list, direct -- list and direct are the same,
5 right?
6 A. Uh-huh. Right.
7 Q. -- wholesale and government?
8 A. The unit price was in there.
9 Q. Was factory cost in there?
10 A. Factory cost was in there.
11 Q. Were there contract prices in there that were
12 inputted by the contract analysts?
13 A. No, not that in that database.
14 Q. That database didn't have any of the market
15 contract prices? Is that your testimony?
16 A. Correct.
17 Q. Okay. You mentioned that -- that you never
18 had any responsibility for reporting AWP to the
19 price-publishing companies, right?
20 A. Correct.
21 Q. Okay. But you saw -- and we've looked at
22 several examples of documents -- from time to time
23 that price-publishing companies provided you
24 information which would indicate to you that the
25 price-publishing companies published AWP on Abbott

35 (Pages 134 to 137)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

36182266-7c50-47fe-9423-7b2843292aa

<p style="text-align: right;">Page 158</p> <p>1 A. Correct.</p> <p>2 Q. (BY MR. WINTER) Okay. Do you recall -- does</p> <p>3 this ring a bell with you now where there had been --</p> <p>4 first of all, let me ask you this question: Do you</p> <p>5 recall a time period in the spring of 2001 when Abbott</p> <p>6 took significant price decreases across the board on a</p> <p>7 number of products and that you communicated those</p> <p>8 price changes to the price-publishing services?</p> <p>9 MR. COLE: Object to the form.</p> <p>10 MR. STETLER: I apologize, Ray, and this</p> <p>11 is intended to be helpful. Do you mean 2002?</p> <p>12 MR. WINTER: No, I mean 2001.</p> <p>13 MR. STETLER: Okay. I guess I wasn't.</p> <p>14 Sorry.</p> <p>15 MR. COLE: I'll object to the form. I</p> <p>16 think I already did, but just to make sure.</p> <p>17 A. Yeah, I remember, you know, vaguely.</p> <p>18 Q. (BY MR. WINTER) Okay. What -- what do you</p> <p>19 remember vaguely that happened in or about May of</p> <p>20 2001?</p> <p>21 MR. STETLER: Oh, I see.</p> <p>22 A. That the prices, you know, went down, and,</p> <p>23 you know, the databank was questioning the changes.</p> <p>24 Q. (BY MR. WINTER) And so based upon your</p> <p>25 review of this e-mail thread and especially starting</p>	<p style="text-align: right;">Page 160</p> <p>1 recollection today of having responded to Redbook and</p> <p>2 telling them, I'm not going to provide a verification</p> <p>3 for the AWP?</p> <p>4 MR. COLE: Object to the form.</p> <p>5 A. Well, I think I said it back here.</p> <p>6 Q. (BY MR. WINTER) Could you show me where you</p> <p>7 said it, please?</p> <p>8 A. Well, I must have on -- you know, on the</p> <p>9 phone or something because it says "I asked her if</p> <p>10 there had been an update since 5/1 they do not provide</p> <p>11 AWP we use markup from" direct.</p> <p>12 Q. Would you continue reading that paragraph.</p> <p>13 A. "So is she saying her email that there has</p> <p>14 been no change to" direct "since 5/1 the customer</p> <p>15 thinks that there has been a change in price on 4/1</p> <p>16 which is probably the price change from 5/1 looks like</p> <p>17 the price went down. I am not quite sure the WAC has</p> <p>18 an effective date of 5/2 and the AWP and" direct "have</p> <p>19 effective date of 5/1."</p> <p>20 Q. So does this indicate to you from reading it</p> <p>21 that there was some confusion within First DataBank as</p> <p>22 to which prices were current, accurate, updated prices</p> <p>23 for this drug?</p> <p>24 MR. COLE: Object to the form.</p> <p>25 A. Yes, it looks like there was confusion.</p>
<p style="text-align: right;">Page 159</p> <p>1 with the communication from you to Redbook, does it</p> <p>2 appear in your mind that this communication was</p> <p>3 concerning those questions that came from the</p> <p>4 price-reporting services after that across-the-board</p> <p>5 price decrease?</p> <p>6 MR. COLE: Object to the form.</p> <p>7 A. Yeah, it looks like it from this e-mail.</p> <p>8 Q. (BY MR. WINTER) Okay. And, in fact, when</p> <p>9 you submitted the e-mail with the new information on</p> <p>10 NDC 6533-01, you reported the new information on the</p> <p>11 direct and the wholesale, right?</p> <p>12 A. Correct.</p> <p>13 Q. And Redbook got back to you, and they said we</p> <p>14 need the AWP information also, right?</p> <p>15 MR. COLE: Object to the form. That's</p> <p>16 not what this document says.</p> <p>17 A. Well, they're asking for it.</p> <p>18 Q. (BY MR. WINTER) Okay.</p> <p>19 A. But --</p> <p>20 Q. Did you provide the AWP information or did</p> <p>21 you verify the AWP information that Redbook had</p> <p>22 listed?</p> <p>23 A. No.</p> <p>24 MR. COLE: Object to the form.</p> <p>25 Q. (BY MR. WINTER) Do you have a present</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. (BY MR. WINTER) And if you continue to the</p> <p>2 top of the page, the next e-mail from Traci Kellam</p> <p>3 back to Laura Lovato says, "Yes, that is how I read</p> <p>4 her e-mail (prior to" May 7, '02). "I looked in" the</p> <p>5 "manufacturer notes, the note was ambiguous concerning</p> <p>6 the mark-up, so I called Jerrie back, she is out until</p> <p>7 Monday. I'll call her back then. The WAC it seems</p> <p>8 from her email is effective" May 7 -- "5/7/02 of</p> <p>9 \$48.50 and prior to that date it was \$141.80 (went</p> <p>10 down). Concerning the AWP per the pricing notes the</p> <p>11 Price of \$764.16 was effective on 4/19/99 and the</p> <p>12 price of \$176.82" was "effective on 5/7/01, Right?"</p> <p>13 She's asking the question.</p> <p>14 Did I read that accurately?</p> <p>15 MR. COLE: I'll just object again to you</p> <p>16 asking her questions about internal Redbook</p> <p>17 communications.</p> <p>18 A. You read it correctly.</p> <p>19 Q. (BY MR. WINTER) And it looks like the author</p> <p>20 of that e-mail, Traci Kellam, made the same mistake as</p> <p>21 Mr. Stetler in applying a 2002 effective date of the</p> <p>22 change instead of a 2001 in at least part of the text</p> <p>23 of her e-mail. Do you see that?</p> <p>24 A. Yes.</p> <p>25 MR. COLE: Object to the form.</p>

41 (Pages 158 to 161)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

<p style="text-align: right;">Page 350</p> <p>1 Q. (BY MR. ANDERSON) Since you left the 2 employment of Abbott, have you had any conversations 3 or other communications with counsel representing 4 Abbott? 5 A. Just Dave. 6 MR. STETLER: Well, I don't represent 7 Abbott. 8 A. Then no. 9 MR. STETLER: Despite the face you just 10 made. We're done. 11 THE REPORTER: Off the record, please. 12 MR. ANDERSON: Well, we -- before we go 13 off, I mean, obviously we don't feel like the 14 deposition is concluded. We have many different lines 15 of questions we need to pursue with the witness. But 16 I understand that we are stopping at 5:00 o'clock, but 17 the deposition is not concluded. 18 MR. COLE: I'll just say -- 19 MR. LEVINE: I agree with that. 20 MR. COLE: -- this is the second full 21 day of testimony that Ms. Cicerales has given in 22 AWP-related matters. She was deposed in the 23 West Virginia AWP case I believe for a full day; she 24 was deposed here for a full day. I'll let Mr. Stetler 25 make any representations about whether he's willing to</p>	<p style="text-align: right;">Page 352</p> <p>1 result the deposition remains open for us as well. 2 MR. COLE: That's all. Thank you. 3 THE REPORTER: Off the record, please. 4 THE VIDEOGRAPHER: The time is 5:02 p.m. 5 We're off the record. This concludes Tape 6. 6 (Deposition Closed.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 351</p> <p>1 bring her back. 2 MR. STETLER: The only thing I'm going 3 to say is I understand your position, and I'll be back 4 to you with ours. 5 MR. COLE: And if I could just briefly 6 state on the record -- 7 MR. STETLER: But it probably will be 8 something less than a million other areas. 9 MR. LEVINE: Well, we need to sort this 10 issue out. 11 MR. STETLER: Well, we're not going to 12 do it now. 13 MR. LEVINE: Right. I understand. 14 MR. STETLER: As I've given everybody 15 warning every time, but once again Texas has to push 16 everything to the limit. 17 MR. COLE: And if I could just briefly 18 state one objection on the record. I talked to 19 Mr. Stuart about this off the record earlier, but it's 20 Abbott's position that they object to any use of this 21 deposition in the AMCC or the class action that's 22 pending in the MDL on the grounds that discovery in 23 that particular case is closed. 24 MR. STUART: And our response is that we 25 consider the discovery dispute is open, and as a</p>	<p style="text-align: right;">Page 353</p> <p>1 STATE OF TEXAS) 2 COUNTY OF TRAVIS) 3 I, WILLIAM M. FREDERICKS, CSR 2392, do hereby 4 certify that, pursuant to the agreement hereinabove 5 set forth, there came before me on the 30th day of 6 May, 2007, at 9:03 o'clock a.m., in the offices of 7 Jones Day, 77 West Wacker Drive, Suite 3500, Chicago, 8 Illinois, the following named person, to-wit: 9 JERALDINE CICERALE, who was by me duly sworn to 10 testify to the truth and nothing but the truth of 11 witness' knowledge touching and concerning the matters 12 in controversy in this cause; that such witness was 13 thereupon examined under oath, and the examination 14 transcribed by computer-assisted transcription by me 15 or under my supervision, and that the deposition is a 16 true record of the testimony given by the witness. 17 I further certify that I am neither attorney 18 nor counsel for, nor related to or employed by, any of 19 the parties to the action in which this deposition is 20 taken and, further, that I am not a relative or 21 employee of any attorney or counsel employed by the 22 parties hereto, or financially interested in the 23 action. 24 That the amount of time used by each party at 25 the deposition is as follows:</p>

89 (Pages 350 to 353)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

<p style="text-align: right;">Page 354</p> <p>1 MR. RAYMOND WINTER - 04:19 MR. JARRETT ANDERSON - 02:21</p> <p>2</p> <p>3 IN WITNESS WHEREOF I have hereunto set my 4 hand on this 18th day of June, A.D. 2007.</p> <p>5</p> <p>6</p> <p>7</p> <p>8 WILLIAM M. FREDERICKS, Texas CSR 2392 Expiration Date: 12/31/2007 Firm Registration No. 82 9 Fredericks-Carroll Reporting 7800 Shoal Creek Boulevard 10 Suite 200W Austin, Texas 78757 11 Telephone: (512) 477-9911 (800) 234-3376 12 Fax: (512) 345-1417</p> <p>13 JOB NO. 2425</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 356</p> <p>1 That \$ is the deposition officer's 2 charges to the Plaintiff(s) for preparing the original 3 deposition transcript and any copies of exhibits; 4 That pursuant to information given to the 5 deposition officer at the time said testimony was 6 taken, the following includes counsel for all parties 7 of record: 8</p> <p>9 MR. RAYMOND WINTER, Attorney for Plaintiff State of Texas; 10 MR. JARRETT ANDERSON, Attorney for the Relator; MR. JEREMY COLE, 11 Attorney for Defendants Abbott Laboratories, Inc. and Hospira, Inc.; 12 MR. MARK LEVINE, Attorney for Plaintiff United States of 13 America; MR. CHRISTOPHER STUART, 14 Attorney for Plaintiff State of Arizona and MDL Plaintiffs; 15 MR. ELISEO SISNEROS, Attorney for the State of California.</p> <p>16</p> <p>17 That a copy of this certificate was served on 18 all parties shown herein on June 18, 2007, and filed 19 with the Clerk pursuant to Rule 203.3. 20 I further certify that I am neither counsel 21 for, related to, nor employed by any of the parties or 22 attorneys in the action in which this proceeding was 23 taken, and further that I am not financially or 24 otherwise interested in the outcome of the action. 25 Certified to by me this 18th day of June,</p>
<p style="text-align: right;">Page 355</p> <p>1 NO. D-1-GV-04-001286 2 THE STATE OF TEXAS) IN THE DISTRICT COURT 3) 4 ex rel.) VEN-A-CARE OF THE) 5 FLORIDA KEYS, INC.,) Plaintiffs,) 6) VS.) TRAVIS COUNTY, TEXAS 7) ABBOTT LABORATORIES INC.,) 8 ABBOTT LABORATORIES,) HOSPIRA, INC., and B. BRAUN) MEDICAL INC.,) Defendant(s).) 201ST JUDICIAL DISTRICT</p> <p>9</p> <p>10 REPORTER'S CERTIFICATION DEPOSITION OF JERALDINE CICERALE May 30th, 2007 11 I, WILLIAM M. FREDERICKS, Certified Shorthand 12 Reporter in and for the State of Texas, hereby certify 13 to the following: 14 That the witness, JERALDINE CICERALE, was 15 duly sworn by the officer and that the transcript of 16 the oral deposition is a true record of the testimony 17 given by the witness; 18 That examination and signature of the witness 19 to the deposition transcript was waived by the witness 20 and agreement of the parties at the time of the 21 deposition. 22 That the amount of time used by each party at 23 the deposition is as follows: 24 Mr. RAYMOND WINTER - 04:19 25</p>	<p style="text-align: right;">Page 357</p> <p>1 2007. 2 3</p> <p>4 WILLIAM M. FREDERICKS, TX CSR 2392 Expiration Date: 12/31/2006 Firm Registration No. 82 5 Fredericks-Carroll Reporting 7719 Wood Hollow Drive, Suite 156 6 Austin, Texas 78731 Telephone: (512) 477-9911 7 (800) 234-3376 Fax: (512) 345-1417</p> <p>8 Job No. 2425 wmf</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

90 (Pages 354 to 357)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

EXHIBIT 14

Chesser, Paul - Vol. II
Washington, DC

October 28, 2008

Page 313

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -x

IN RE: PHARMACEUTICAL INDUSTRY : MDL NO. 1456

AVERAGE WHOLESALE PRICE LITIGATION : CIVIL ACTION

THIS DOCUMENT RELATES TO: : 01-CV-12257-PBS

United States of America ex rel. :

Ven-a-Care of the Florida Keys, :

Inc., v. Boehringer Ingelheim :

Corp., et al., Civil Action No. :

07-10248-PBS and United States of :

America, ex rel. Ven-A-Care of the : Hon. Patti B.

Florida Keys, Inc., v. Abbott : Saris

Laboratories, Inc., Civil Action :

Nos. 06-11337-PBS and :

07-CV-11618-PBS :

- - - - -x

(CROSS NOTICED CAPTIONS ON FOLLOWING PAGES)

Washington, D.C.

Tuesday, October 28, 2008

VOLUME II

PAUL CHESSE

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Chesser, Paul - Vol. II

October 28, 2008

Washington, DC

Page 626

1 A. I don't know about that. What I -- what I
2 recall about going painstakingly over every one of
3 those rows of data, that the injectables seemed to
4 have large discounts. And it was a challenge to know
5 whether you were using the correct units.

6 Q. Could you explain that to me? How is --
7 how is that? What was the challenge there?

8 A. Well, I went back and reviewed everything
9 where the discount was over a certain -- I don't
10 remember what percent I used, or under a certain.
11 And without a doubt, I had to go back and look at
12 more NDCs that turned out to be injectables than
13 anything else.

14 And part of the problem -- it was even a
15 challenge to go back -- I used the Red Book as my
16 reference. What they would show as the number of
17 units for a particular NDC. That was the challenge,
18 was getting -- making sure you were using the right
19 units, because if I remember right at '94, we had
20 a -- I don't think we had the package price. I think
21 we had the unit price. I think we had to convert
22 everything to unit price to be able to compare it to

Page 627

1 AWP.

2 So the challenge, when you got to the
3 injectables, was there might be, say, a thousand
4 milligrams but it's -- are there 10 of them in the
5 package or not. And that was -- and ultimately, what
6 proved to be the most reliable source for me was to
7 go to the actual invoice, and see -- read the
8 description of what the quantity was on that invoice.
9 I couldn't necessarily rely on what the Red Book
10 showed, or I think it was in 2000, '99 review, I was
11 actually trying to use First DataBank's quantity for
12 each NDC. But I spent more time on injectables than
13 anything else in my review, investigating odd
14 numbers.

15 Q. Because if it were a thousand milliliter
16 bag, you could be off by a factor of a thousand if
17 there were no --

18 A. 20 or -- I mean, the packaging of those is
19 -- it's not the same from one reference source to
20 another. And plus, I had to look up a lot of them
21 because there were really significant discounts on
22 some of them.

Page 628

1 BY MR. COOK:

2 Q. When you say significant discounts --

3 A. 90 plus percent.

4 Q. The analysis that you conducted of the
5 invoices that were pulled in 1994, am I correct from
6 my review of the spreadsheets that you had largely
7 completed the analysis of those invoices and created
8 the spreadsheets and done the basic calculations by
9 April or May of -- of 1995? Or would you have to go
10 back and look at the documents to see?

11 A. Yeah. I don't -- I don't remember.

12 Q. Okay. You had certainly collected all
13 your data by that point, right?

14 A. I don't even know the answer to that for
15 sure.

16 Q. But the documents would show presumably?

17 A. Yes.

18 Q. And just so we are clear, when you're
19 referring to injectables, can you give me some
20 examples of what types of drugs you're talking about
21 with -- or products you're talking about with respect
22 to injectables?

Page 629

1 A. Saline solution.

2 Q. So dextrose solution, for example, would
3 be an injectable? Would you agree that sterile water
4 would be an injectable?

5 A. Yes.

6 Q. If it were an IV bag, an IV solution
7 antibiotic would be an injectable?

8 A. Yes.

9 Q. Do you know who Dr. Bruce Vladeck is?

10 A. He was the administrator at CMS for a
11 little while.

12 Q. He was the administrator from 1992 to
13 1997. Does that sound right?

14 A. Close enough.

15 Q. Close enough. He testified earlier in
16 this case, and testified that with respect to
17 infusion products, injectable products, such as
18 sodium saline solution, that his expectation was that
19 he would see discounts of 99 percent obtainable
20 through GPOs. Would that be consistent with the
21 empirical data that you reviewed in 1994?

22 MR. DRAYCOTT: Objection.

80 (Pages 626 to 629)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Chesser, Paul - Vol. II

October 28, 2008

Washington, DC

<p style="text-align: right;">Page 630</p> <p>1 THE WITNESS: I don't -- I don't know that 2 I looked at the data sufficiently to be able to draw 3 that conclusion. 4 BY MR. COOK: 5 Q. Would it surprise you to see discounts in 6 the 90 percent plus range for these injectables? 7 A. No. It was very common. 8 Q. Did you find that these products tended to 9 be expensive products? 10 MR. DRAYCOTT: Objection. 11 THE WITNESS: No. I don't think they 12 were. 13 BY MR. COOK: 14 Q. So a bag of saline, based upon your review 15 of actual tens of thousands of pages of actual data, 16 what would you expect to pay for a bag of saline 17 solution? 18 A. Not much. 19 MS. ALBEE: Objection. Form. 20 BY MR. COOK: 21 Q. 70 cents, a dollar? 22 A. Oh, I don't -- it's been too long.</p>	<p style="text-align: right;">Page 632</p> <p>1 of look at as commencing an investigation? 2 MR. BEIMERS: Objection. 3 THE WITNESS: In this case, no. And at 4 that time no. When we do -- we do audit start 5 notices a lot currently. I don't know that we did 6 them always at that time. 7 BY MR. COOK: 8 Q. Certainly by August 30th of 1994, in this 9 case, you had commenced your audit, correct? 10 A. Correct. 11 Q. Is there a difference, and I don't know 12 the answer, is there a difference between an audit 13 and an investigation in OIG parlance? 14 A. Yes. 15 Q. What is the difference? 16 A. Well, we have in addition to the Office of 17 Audit Services, we have an Office of Investigations. 18 These are all special agents who are criminal 19 investigators who work on criminal as well as civil 20 cases. And a lot of times in conjunction with the 21 Department of Justice. 22 Q. And what's an audit as opposed to an</p>
<p style="text-align: right;">Page 631</p> <p>1 Q. I'm told that we need to change the tape, 2 so it's a good time for a break. 3 THE VIDEOGRAPHER: This concludes volume 4 II, tape three, in the deposition of Paul Chesser. 5 Off the record at 4:29. 6 (Recess.) 7 THE VIDEOGRAPHER: Here begins volume II, 8 tape four, in the deposition of Paul Chesser. On the 9 record at 4:34. 10 BY MR. COOK: 11 Q. Just in terms of timing, so I can place us 12 in time, Mr. Chesser, the OAS investigation into the 13 difference between average wholesale price and 14 pharmacy acquisition cost was begun sometime prior to 15 August of 1994, correct? 16 A. August of '94 is when we had the meeting 17 with the state folks in Richmond, so sometime barely 18 before that. 19 Q. All right. So I'm just trying to get sort 20 of a starting point of when the investigation 21 commenced. Is there a formal commencing of an 22 investigation, a document or an event that you sort</p>	<p style="text-align: right;">Page 633</p> <p>1 investigation? 2 A. An audit is just looking to see whether 3 some criteria has -- is being complied with or not. 4 Not necessarily whether it's legal or illegal. It's 5 just whether it's economic -- economical and 6 efficient way to provide services, or something along 7 those lines. 8 Q. So you're still investigating it in the 9 sense that you're looking at facts, but you're not 10 necessarily investigating it because someone has made 11 an accusation of improper conduct? 12 A. Correct. We are not looking for criminal 13 or civil. 14 Q. Do you have any procedure that you -- that 15 you use when you come across evidence of fraud or 16 abuse in the course of an audit? 17 A. Yes. I personally haven't had to deal 18 with that, but we are supposed to contact OI 19 immediately because the rules of evidence are 20 different when you're in a criminal environment than 21 they are during an audit. 22 Q. In the course of your 1994 investigation,</p>

81 (Pages 630 to 633)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Chesser, Paul - Vol. II
Washington, DC

October 28, 2008

Page 658

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

PAUL CHESSER

SUBSCRIBED AND SWORN to before me this _____ day
of _____, 2008.

NOTARY PUBLIC

My Commission expires: _____

88 (Page 658)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

EXHIBIT 15

CAUSE NO. D-1-GV-04-001286

THE STATE OF TEXAS) IN THE DISTRICT COURT
)
ex rel.)
VEN-A-CARE OF THE)
FLORIDA KEYS, INC.,)
)
Plaintiffs,)
)
VS.) TRAVIS COUNTY, TEXAS
)
)
ABBOTT LABORATORIES INC.,)
ABBOTT LABORATORIES,)
HOSPIRA, INC., and B. BRAUN)
MEDICAL INC.,)
)
Defendants.) 201ST JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

STACEY CHRONIS

September 28, 2006

(DESIGNATED HIGHLY CONFIDENTIAL)

ORAL AND VIDEOTAPED DEPOSITION OF STACEY CHRONIS,
produced as a witness at the instance of the
Plaintiffs, and duly sworn, was taken in the
above-styled and numbered cause on the 28th day of
September, 2006, from 9:19 a.m. to 1:15 p.m., before
WILLIAM M. FREDERICKS, CSR in and for the State of
Texas, reported by machine shorthand, at the offices
of Stetler & Duffy, Ltd., 11 South LaSalle Street,
Suite 1200, Chicago, Illinois, pursuant to the Texas

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

b22ad0b9-2749-4499-b479-924cf0899945

Page 94

1 poor in Texas, correct?
 2 A. Yes.
 3 Q. All right. Now, when you sent this letter of
 4 July 17th, 2000, to Mrs. McNeill, did you have any
 5 idea how Abbott AWP's for HPD drugs were calculated or
 6 determined?
 7 A. Yes.
 8 Q. And how did you -- how did you -- how did you
 9 gather that information?
 10 A. With my outside counsel, Jones Day, I began
 11 to interview a series of employees of Abbott mainly in
 12 the pricing department, some of whom we've already
 13 talked about this morning. And so I interviewed them
 14 and tried to educate ourselves on how they were
 15 submitting pricing information to the state.
 16 Q. Did you educate yourself on how Abbott AW --
 17 AWP's are determined?
 18 A. Yes, that also.
 19 Q. And how did you learn that Abbott AWP's were
 20 determined?
 21 A. Through discussions with Mike Sellers and
 22 Deb DeYoung, they explained it to me. I can't tell
 23 you right now what they said specifically, but I
 24 remember that we interviewed them, both myself and my
 25 outside counsel.

Page 95

1 Q. Did you learn that Abbott submits a list
 2 price to pricing -- pricing compendia like
 3 First DataBank --
 4 A. Yes.
 5 Q. -- which then adds a percentage on to it to
 6 get to AWP?
 7 A. Yes, I learned that.
 8 Q. Okay. Now, having learned that, would you
 9 please go to paragraph -- the second page where you
 10 talk about "'Average of Suggested Wholesale Price to
 11 Pharmacy ('AWP')." "
 12 Do you see that?
 13 A. Yes.
 14 Q. And you say in there in the middle of the
 15 first -- at the first sentence, "Abbott does not
 16 suggest any prices at which its products should or
 17 even might be sold to pharmacies."
 18 Did you see that?
 19 A. Yes.
 20 Q. You wrote that to Mrs. McNeill, didn't you?
 21 A. Yes.
 22 Q. And a few -- one sentence -- two sentences
 23 down, "Abbott does not set the formula used by the
 24 various services in calculating that price."
 25 Do you see that?

Page 96

1 A. I do.
 2 Q. Okay. Can you show us where in that
 3 paragraph you -- you disclose to Mrs. McNeill that
 4 Abbott's AWP's are, in fact, a result of list prices
 5 that Abbott provides knowing that a formula -- a
 6 specific formula will be applied to that list price to
 7 get to AWP?
 8 MR. BERLIN: Objection, form.
 9 A. It doesn't say that anywhere.
 10 Q. (BY MR. BREEN) Does it say that anywhere in
 11 your letter at all?
 12 A. No.
 13 Q. Did you at any point in that letter disclose
 14 to Mrs. McNeill that Abbott determines AWP's by
 15 submitting list prices knowing what formula is going
 16 to be applied to get to AWP?
 17 MR. BERLIN: Objection, form.
 18 Make sure you've heard his --
 19 THE WITNESS: Uh-huh.
 20 MR. BERLIN: -- question.
 21 A. Well, Abbott doesn't determine the AWP, so
 22 that's why it's not in the letter.
 23 Q. (BY MR. BREEN) But you knew that it
 24 determined a list price that it -- that it reported so
 25 that a formula could be added to that to get to AWP,

Page 97

1 didn't you?
 2 A. Right. That's correct.
 3 Q. So you knew that Abbott had the ability to
 4 determine its AWP by submitting a specific list price?
 5 MR. BERLIN: Objection, form.
 6 A. No.
 7 Q. (BY MR. BREEN) No?
 8 MR. STETLER: You heard her. "No."
 9 Q. (BY MR. BREEN) So explain to me then. If --
 10 if Abbott decides what list price it's going to
 11 report --
 12 A. Right.
 13 Q. -- to a pricing compendia knowing that the
 14 compendia is going to add a percentage to get to an
 15 AWP and Abbott can report whatever list price it
 16 wants, then how is it that Abbott does not determine
 17 what its AWP is going to be?
 18 MR. BERLIN: Objection, form.
 19 A. Well, my understanding was that the
 20 compendium set the AWP. So Abbott was not determining
 21 the AWP. The compendiums were. Yes, it's true that
 22 Abbott set the list price, and the compendiums would
 23 then come up with a formula for what the AWP would be
 24 on a particular product.
 25 Q. (BY MR. BREEN) Were you trying to

25 (Pages 94 to 97)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

b22ad0b9-2749-4499-b479-924cf0899945

Page 98

1 communicate to Mrs. McNeill in this paragraph under
2 "Average of Suggested Wholesale Price to Pharmacy
3 ('AWP')" that Abbott had no control over its AWP, or
4 the AWP for its drugs?

5 MR. BERLIN: Objection, form.

6 A. I don't think I -- I was trying to suggest
7 anything. I think -- I mean, I stand on what the
8 letter says here, that Abbott does not submit AWP and
9 that they can be obtained from Red Book or
10 First database (sic).

11 Q. (BY MR. BREEN) Now, if we go to the next
12 page -- actually, it starts on the bottom of this
13 second page where it says "Price to Wholesaler and/or
14 Distributor."

15 Do you see that?

16 A. Yes.

17 Q. And then the last sentence on that page
18 begins "Please note that WAC is a published number
19 that represents the price at which Abbott sells its"
20 products "to wholesalers."

21 Do you see that?

22 A. I do.

23 Q. Did you conduct any kind of an inquiry, a
24 good faith inquiry to assure yourself that the WACs
25 that Abbott was reporting to Texas Medicaid were, in

Page 99

1 fact, the prices it was charging to wholesalers?

2 A. Yes.

3 Q. Did you do that for Vancomycin?

4 A. I don't remember what particular products.

5 Q. So -- well, what did you do to assure
6 yourself that, in fact, the -- Abbott's WACs being
7 reported to Texas on this form or on this report that
8 you sent --

9 MR. BERLIN: The letter.

10 Q. (BY MR. BREEN) -- the letter were, in fact,
11 the prices Abbott was charging to wholesalers?

12 A. Well, first and primarily I relied on my
13 outside counsel to gather the information from our
14 internal business people, from the pricing people, and
15 it was the pricing people who we went to and asked
16 them to provide us with the information that went into
17 the letter, all of the information.

18 Q. So you just assumed they were correct?

19 A. I know that -- I don't recall whether I
20 looked at the agreements myself, but I know that
21 Jones Day did.

22 Q. So then based upon your best recollection
23 sitting here today, you didn't conduct the
24 investigation; Jones Day did, correct?

25 A. No, that's not correct. I along with Jones

Page 100

1 Day conducted the investigation. It was a joint
2 effort. Typically an in-house counsel probably has
3 50 to a hundred pending cases at any one time, so it's
4 not unusual for us to, you know, begin an
5 investigation, get it off the ground and running, or a
6 lawsuit, and then kind of let the outside counsel
7 continue on with the investigation and then report
8 back to me on what their findings are.

9 So it's not fair to say that only
10 Jones Day did the investigation. I was involved with
11 it, but because this -- they probably did the lion's
12 share of the investigation.

13 Q. Are you --

14 A. And that's typical.

15 Q. Are you aware that the price that you
16 represented to Martha McNeill as being the WAC for
17 Vancomycin, one gram, was, in fact, approximately
18 two-and-a-half times higher than the price you were
19 selling for -- that same drug for to wholesalers?

20 MR. BERLIN: Objection, form.

21 A. No.

22 Q. (BY MR. BREEN) If that's -- if that turns
23 out to be the case, was it the responsibility of your
24 investigation or Jones Day investigation to determine
25 that, in fact, the WACs that were being represented

Page 101

1 here for Vancomycin were the WACs that were being
2 charged to wholesalers?

3 MR. BERLIN: Objection, form.

4 MR. BREEN: I'll restate the question.

5 Q. (BY MR. BREEN) Whose responsibility was it
6 to ensure that you were truthfully reporting the WAC
7 for Vancomycin, one gram, to Martha McNeill? Whose
8 responsibility was it to ensure that that was, in
9 fact, the price being charged to wholesalers?

10 A. It was --

11 MR. BERLIN: Objection to form.

12 THE WITNESS: Oh, I'm sorry.

13 MR. BERLIN: There are --

14 MR. BREEN: Two questions.

15 MR. BERLIN: -- two questions in there,
16 and the objection goes to the second question.

17 Q. (BY MR. BREEN) Whose job was it to make sure
18 that the WAC you reported for Vancomycin, one gram,
19 was, in fact, the WAC being charged to wholesalers?

20 A. I think it was the responsibility of all the
21 parties involved, everyone on behalf of Abbott.
22 Primarily we relied on the information we obtained
23 from the pricing people. That's their expertise,
24 that's what they do every day, so we rely on that
25 information from them.

26 (Pages 98 to 101)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

b22ad0b9-2749-4499-b479-924cf0899945

EXHIBIT 16

Cobo, Luis E.

January 18, 2008

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -
IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(captions continue on following pages)

Videotaped deposition of LUIS E. COBO

Volume I

Washington, D.C.

Friday, January 18, 2008

8:00 a.m.

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

52709dae-dbd0-4e87-9d3a-d575eb26360f

Cobo, Luis E.

January 18, 2008

<p style="text-align: right;">Page 130</p> <p>1 business perspective of what that would produce.</p> <p>2 Q. You would agree with me that there is</p> <p>3 some price at which Abbott could sell a single bag</p> <p>4 of saline and make money to somebody calling an 800</p> <p>5 number and buying it, right?</p> <p>6 A. Sure.</p> <p>7 Q. And that is somewhere above Ven-A-Care's</p> <p>8 cost, right?</p> <p>9 MR. BREEN: Objection to form.</p> <p>10 A. I wouldn't know. I would suspect so.</p> <p>11 But, I mean, I'm not an economist and I'm not going</p> <p>12 to sit there and represent that.</p> <p>13 Q. That's my next question.</p> <p>14 A. Okay.</p> <p>15 Q. You have no idea what an appropriate</p> <p>16 amount it would be for Abbott to charge that single</p> <p>17 or two-bag customer for that direct sale, do you?</p> <p>18 MR. BREEN: Objection, form.</p> <p>19 A. I don't have -- I'm sorry.</p> <p>20 Q. You don't know what an appropriate price</p> <p>21 would be for Abbott to charge in the marketplace for</p> <p>22 that, do you?</p>	<p style="text-align: right;">Page 132</p> <p>1 way that it is. If you're asking me if the price of</p> <p>2 saline water, I wouldn't think it cost that much.</p> <p>3 Q. Well, I'll ask you. Did the volume of</p> <p>4 the bag affect much the price?</p> <p>5 MR. BREEN: Objection, form.</p> <p>6 A. No. I would say the price was in a</p> <p>7 relatively close range with the different volumes of</p> <p>8 product.</p> <p>9 Q. So a thousand milliliter bag didn't cost,</p> <p>10 if I do my math right, twenty times a 50-milliliter</p> <p>11 bag, for example?</p> <p>12 A. No.</p> <p>13 Q. And if you were paying in the order of</p> <p>14 magnitude of a dollar or two a bag when you were</p> <p>15 purchasing it in a case size, would you be surprised</p> <p>16 if calling Abbott to order a single bag might cost</p> <p>17 you \$10 or \$11 for that bag?</p> <p>18 MR. BREEN: Objection, form.</p> <p>19 A. Once again, it's a hypothetical.</p> <p>20 Q. Right. Because you never did that,</p> <p>21 right?</p> <p>22 A. You want to know if I called Abbott and I</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I would not have that -- no. I do not</p> <p>2 have that cost, that price.</p> <p>3 Q. Are you familiar with the marketplace for</p> <p>4 infusion drugs as a purchaser of infusion drugs over</p> <p>5 the years?</p> <p>6 A. I don't know. I don't know. I mean,</p> <p>7 I've got my insight, my perspective, and that's all</p> <p>8 I have. And what I've garnered from these cases and</p> <p>9 what have you.</p> <p>10 Q. Would you agree with me that the order of</p> <p>11 magnitude that these solutions cost to a purchaser</p> <p>12 like Ven-A-Care was on the order of magnitude of a</p> <p>13 dollar a bag?</p> <p>14 MS. BROOKER: Objection, form.</p> <p>15 A. The saline dextrose products that</p> <p>16 Ven-A-Care was purchasing would be along that</p> <p>17 magnitude of a dollar to two dollars a bag.</p> <p>18 Q. And the amount of saline in the bag</p> <p>19 didn't much affect the cost of the product because</p> <p>20 the saline really wasn't worth all that much, right?</p> <p>21 MR. BREEN: Objection, form.</p> <p>22 A. I don't know how or why it's valued the</p>	<p style="text-align: right;">Page 133</p> <p>1 said I need one bag --</p> <p>2 Q. I'm Luis Cobo.</p> <p>3 A. -- and they said, okay, we're going to</p> <p>4 sell you one bag. And then they're going to tell me</p> <p>5 what price?</p> <p>6 Q. Right.</p> <p>7 A. What price are they going to sell it to</p> <p>8 you?</p> <p>9 Q. \$13.</p> <p>10 A. \$13. For one bag?</p> <p>11 Q. Right.</p> <p>12 MR. BREEN: Objection, form.</p> <p>13 A. And I don't have a contract?</p> <p>14 Q. No, sir. You are a stranger to Abbott.</p> <p>15 MS. BROOKER: Objection, form.</p> <p>16 A. I guess it would surprise me.</p> <p>17 Q. Because it's too low?</p> <p>18 A. Oh, I don't know. I would have a --</p> <p>19 under that scenario if I needed the product bad</p> <p>20 enough and I realized I didn't have a contract or a</p> <p>21 direct account or something and I had no other</p> <p>22 resource to purchase it and I've got somebody out to</p>

34 (Pages 130 to 133)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis E.

January 18, 2008

<p style="text-align: right;">Page 134</p> <p>1 take care of then I would pay it. I don't know if</p> <p>2 it would be too low or not by their standards.</p> <p>3 Q. You said --</p> <p>4 A. I would hope this they would give it to</p> <p>5 me also.</p> <p>6 Q. You said that it would surprise you if</p> <p>7 Abbott would be willing to sell it to you at \$13.</p> <p>8 Is that what would surprise you?</p> <p>9 MR. BREEN: Objection, form.</p> <p>10 A. Correct.</p> <p>11 Q. You would expect them to charge even more</p> <p>12 for that sort of a small sale?</p> <p>13 A. I wouldn't have any expectations under</p> <p>14 that scenario, because it -- I mean, you're asking</p> <p>15 me to comment on something, on a situation, that I</p> <p>16 don't envision in the real world. So --</p> <p>17 Q. Well, it never happened for you because</p> <p>18 you were a large -- I mean, not a large. But you</p> <p>19 were a large purchaser relative to someone who might</p> <p>20 need just one or two bags, right?</p> <p>21 MR. BREEN: Objection, form. This line</p> <p>22 of questions has been asked and answered and asked</p>	<p style="text-align: right;">Page 136</p> <p>1 whatever it was. They did not give me any kind of a</p> <p>2 discount or break or direct price or contract price</p> <p>3 or wholesale cost or anything like that.</p> <p>4 So that's the way that that transaction</p> <p>5 was handled and I would assume it would be the same.</p> <p>6 The problem I'm having trouble getting past is the</p> <p>7 one bag scenario. So I mean, I only have reality to</p> <p>8 reflect on.</p> <p>9 Q. When did this call to Abbott take place?</p> <p>10 A. Years ago. Years ago. This was 20 years</p> <p>11 ago at least.</p> <p>12 Q. So it was your understanding at least</p> <p>13 that if you didn't have a contract with Abbott, if</p> <p>14 you didn't have a direct account with Abbott, that</p> <p>15 Abbott might not break up a case for you but it</p> <p>16 would certainly charge you list price for that</p> <p>17 product?</p> <p>18 MR. BREEN: Objection, form.</p> <p>19 A. No. That is not my understanding.</p> <p>20 Q. Well, Abbott did charge you list price?</p> <p>21 A. What they did under those circumstances</p> <p>22 was unique for me. They would not do that now. And</p>
<p style="text-align: right;">Page 135</p> <p>1 and answered. And how long are you going to go with</p> <p>2 it? The same question over and over again.</p> <p>3 MR. COOK: Could you read back the last</p> <p>4 question, please?</p> <p>5 (Whereupon, the requested portion was</p> <p>6 read by the reporter.)</p> <p>7 MR. BREEN: Objection, form.</p> <p>8 A. Rather than the hypothetical, let me just</p> <p>9 reflect on reality. Instead of the one or two bags,</p> <p>10 I had an incident in my practice many, many years</p> <p>11 ago, Cobo Pharmacy -- this is after Abbott had</p> <p>12 stopped having direct accounts with pharmacies. I</p> <p>13 don't know when that was, but that's how far back it</p> <p>14 goes. And I had a urologist that called me and</p> <p>15 needed some -- a bag of irrigation solution and</p> <p>16 couldn't get it at the hospital, couldn't get it</p> <p>17 anywhere. And he asked me to take care of it for</p> <p>18 him and I did.</p> <p>19 And I called Abbott and they told me, no,</p> <p>20 we can't sell you just one or two bags. You have to</p> <p>21 buy an entire case. And they sold me the entire</p> <p>22 case. But they sold me at some list price or</p>	<p style="text-align: right;">Page 137</p> <p>1 I'm not familiar with any case where they have done</p> <p>2 that since.</p> <p>3 Q. Did they do it for you?</p> <p>4 A. At that time. And like I say, we're</p> <p>5 going back 20, 25 years ago. It was right after the</p> <p>6 time that we stopped having a direct account with</p> <p>7 Abbott. And I think for that reason they gave me</p> <p>8 some consideration. But it's just a practice that</p> <p>9 wouldn't happen otherwise.</p> <p>10 Q. But today if you were to call Abbott to</p> <p>11 purchase directly with no account and no contract,</p> <p>12 you would expect to pay list price, correct?</p> <p>13 MR. BREEN: Objection, form. Wait a</p> <p>14 minute. Could you read that question back, please?</p> <p>15 Excuse me.</p> <p>16 (Whereupon, the requested portion was</p> <p>17 read by the reporter.)</p> <p>18 MR. BREEN: Objection, form.</p> <p>19 A. I don't believe so. If I didn't have</p> <p>20 that situation it would be a transaction that would</p> <p>21 either be handled through my wholesaler. They would</p> <p>22 probably drop ship it through my wholesaler and then</p>

35 (Pages 134 to 137)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Cobo, Luis E.

January 18, 2008

Page 270

1 Q. And the money that resulted from the
2 fraud that you've alleged, that went to Cobo
3 Pharmacy, correct?

4 MS. BROOKER: Objection to form.

5 A. Initially it went to Cobo Pharmacy. And
6 then it was eventually sent back to the State of
7 Florida, the Medicaid system.

8 Q. Approximately five years after your
9 meeting with HCFA about this case, correct?

10 A. I think it was more like six and a half,
11 to be accurate. About six and a half.

12 MR. COOK: I have no more questions, but
13 I do leave the deposition open and reserve the right
14 to ask more questions at our second day.

15 MR. BREEN: As long as you don't ask him
16 about TPN again.

17 THE VIDEOGRAPHER: This concludes tape 5
18 in the deposition of Luis Cobo. We adjourn for the
19 day at 4:08.

20 (Whereupon, at 4:08 p.m. the deposition
21 was adjourned.)

22 * * * * *

Page 271

1
2
3
4
5
6
7
8 _____
9 SIGNATURE OF THE WITNESS

10 Subscribed and sworn to and before me
11 this _____ day of _____, 20____.

12
13
14 _____
15 Notary Public

16
17
18
19
20
21
22

69 (Pages 270 to 271)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

EXHIBIT 17

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-12257-PBS
)
THIS DOCUMENT RELATES TO:)
)
United States of America,) Hon. Patti Saris
ex rel. Ven-a-Care of the)
Florida Keys, Inc., v.)
Abbott Laboratories, Inc.,)
and Hospira, Inc.)
CIVIL ACTION NO. 06-11337-PBS)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
) 01-CV-12257-PBS
)
THIS DOCUMENT RELATES TO:)
) Judge Patti B. Saris
State of Arizona v. Abbott)
Labs., et al.)
Civil Action No. 06-CV-11069-PBS)

ORAL AND VIDEOTAPED DEPOSITION OF

PATRICK J. DeGRACE

June 1, 2007

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

<p style="text-align: right;">Page 46</p> <p>1 A. I -- I have almost no knowledge of that, but 2 I -- that's about as -- what you just said is about 3 what I know about it. 4 Q. (BY MR. WINTER) Okay. So you agree with my 5 statement that you have a general understanding that 6 AWP is a factor in reimbursement by Medicare and 7 Medicaid? 8 A. I -- 9 MR. WINCHESTER: Objection to the form. 10 Also to the time frame. 11 A. Yeah. I don't agree with what you said as a 12 general understanding. I would say I have a very 13 cursory understanding, and my experience with AWP was 14 only during the Trade Sales time, and it was something 15 that the -- it was something that the wholesalers 16 apparently reported. 17 Q. (BY MR. WINTER) Okay. And let's -- I want 18 to address your counsel's objection about the time 19 frame, that it was unclear. So -- and you've helped 20 me out with your just -- your response just now. 21 So do I understand, then, from the time 22 you became the Director of Trade Sales in 1995, in or 23 around July of '95 forward -- so since July of 1995, 24 is it true that you have gained some cursory, I think 25 was the word you used, understanding that AWP was a</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Yes, sir. 2 Q. How did you gain that understanding? 3 A. Through my deposition. 4 Q. As -- as a result of the questions that were 5 asked of you by Mr. Barrett? 6 A. Some of that, yes, sir. 7 Q. And any other understanding you gained just 8 as a result of preparation and context of the 9 deposition? 10 A. Yes, sir. 11 Q. Have you ever heard of a pricing term called 12 J-I-T, JIT price? 13 A. I've heard of it. I've never heard of it as 14 price. I've heard of JIT. 15 Q. What does JIT mean to you, sir? 16 A. It's just-in-time distribution. 17 Q. Does that describe a price at which a 18 distributor customer of Abbott's could purchase Abbott 19 product? 20 A. Well, the -- the distributor -- the hospital 21 products distributor would break down the products and 22 deliver it in piecemeal to a hospital, and that was 23 called JIT distribution. That's my understanding. 24 Q. So is it fair to say that your understanding 25 of JIT is sort of -- is a process by which Abbott</p>
<p style="text-align: right;">Page 47</p> <p>1 factor used by third-party payers such as Medicare and 2 Medicaid in calculating reimbursement to providers? 3 A. I understand that it's a very -- my 4 understanding is a very cursory understanding. It's 5 not something I deal with at all. 6 Q. And I appreciate that it's not something you 7 deal with. My question, sir, is, as part of this 8 cursory understanding that you have gained since July 9 of 1995, did that include the understanding that AWP 10 was used by third-party payers, including Medicare and 11 Medicaid, in the reimbursement -- the calculation of 12 reimbursement to providers? 13 A. I mean, not really. Not really. I -- my 14 understanding was that it was something that was 15 reported to the wholesalers, and that was my 16 understanding of how it was used. 17 Q. Did you understand it -- that it had 18 something to do with third-party reimbursement? 19 A. Not during my trade days, to be frank with 20 you. 21 Q. When did you gain the understanding that AWP 22 had something to do with Medicare and Medicaid 23 reimbursement? 24 A. In '05. 25 Q. In 2005?</p>	<p style="text-align: right;">Page 49</p> <p>1 products are distributed? 2 A. Through a distributor correctly (sic). 3 Q. But you have not heard it in connection with 4 any price point? 5 A. No, sir. 6 Q. What was the price at which Abbott's 7 distributor customers could purchase Abbott's product? 8 A. The -- 9 MR. WINCHESTER: Objection, form. 10 A. The hospital distributors, med/surg 11 distributors that I dealt were -- they purchased at 12 DAC, distributor acquisition cost. 13 Q. (BY MR. WINTER) Would DAC typically be 14 higher or lower than WAC? 15 A. I can't tell you. There was a slight 16 difference, but I can't tell you what the difference 17 was, if it was higher or lower. 18 Q. Is it true that your customers who purchased 19 Abbott's products at WAC typically processed 20 charge-backs? 21 A. Yes, sir. 22 Q. And is that because the ultimate contract 23 price at which that wholesaler in turn sold the 24 product would be lower than the WAC? 25 A. Yes, sir.</p>

13 (Pages 46 to 49)

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

EXHIBIT 18

Newark, DE

Page 273

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

-----X
IN RE: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE) Civil Action No.
LITIGATION) 01-12257-PBS
-----X

THIS DOCUMENT RELATES TO:) Hon. Patti B.
United States of America ex rel.) Saris
Ven-A-Care of the Florida Keys,)
Inc. v. Dey, Inc., et al., Civil)
Action No. 05-11084-PBS; and)
United States of America ex rel.)
Ven-A-Care of the Florida Keys,)
Inc. v. Boehringer Ingelheim)
Corp., et al., Civil Action No.)
07-10248-PBS)
-----X

Videotaped deposition of
THE DELAWARE DIVISION OF MEDICAID AND MEDICAL
ASSISTANCE by CYNTHIA DENEMARK - VOLUME II
December 10, 2008 - Newark, Delaware

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

7e3b40ac-6aba-43aa-8f67-e3aa33ec80c0

Newark, DE

Page 346	Page 348
<p>1 packaging, the staff is there. So I'm not sure I</p> <p>2 could agree there's a difference in cost, if you</p> <p>3 go with my presumption that you have a baseline</p> <p>4 staff.</p> <p>5 Q. What about the costs for a home IV</p> <p>6 pharmacy to dispense a compounded prescription?</p> <p>7 Would you agree that Delaware was aware that</p> <p>8 those costs exceeded the standard costs to</p> <p>9 dispense a bottle of pills from a traditional</p> <p>10 pharmacy?</p> <p>11 MS. HEALY SMITH: Objection.</p> <p>12 THE WITNESS: So just to be clear,</p> <p>13 you've changed the type of questions you're</p> <p>14 asking and were asking, based on the Division's</p> <p>15 policy, whether that there was a separate or a</p> <p>16 different methodology for reimbursement on IV add</p> <p>17 mixture.</p> <p>18 BY MS. RAMSEY:</p> <p>19 Q. No, I wasn't asking about a separate</p> <p>20 policy. I was asking about knowledge of the</p> <p>21 specific increased costs for a home IV company to</p> <p>22 administer IV drugs?</p>	<p>1 THE WITNESS: Wow, something before my</p> <p>2 time.</p> <p>3 Sorry. I couldn't help myself. I know</p> <p>4 we're on record still.</p> <p>5 1988.</p> <p>6 MS. SHUTTEE: Yeah.</p> <p>7 BY MS. RAMSEY:</p> <p>8 Q. Now, after you have a moment to review</p> <p>9 this document, let me know, and I'll direct you -</p> <p>10 - you don't have to read it page by page, but</p> <p>11 just familiarize yourself.</p> <p>12 And for the record this is a Medicaid</p> <p>13 Pharmacy Bulletin that's dated January to</p> <p>14 February, 1988, titled Developing an Effective</p> <p>15 Reimbursement Methodology for Home IV Therapy.</p> <p>16 First of all, are these Medicaid</p> <p>17 Pharmacy Bulletins documents that you received in</p> <p>18 your work with Delaware Medicaid?</p> <p>19 A. Not the ones that were sponsored by</p> <p>20 Lederle, but the ones that came after Lederle. I</p> <p>21 think the first one I received were by Parke-</p> <p>22 Davis.</p>
Page 347	Page 349
<p>1 A. I want to make sure that I'm answering</p> <p>2 the question correctly, so I need it --</p> <p>3 MS. SHUTTEE: Do you need to have it</p> <p>4 read back to you?</p> <p>5 THE WITNESS: -- read back to me. I'm</p> <p>6 sorry.</p> <p>7 MS. RAMSEY: Actually, I can go ahead</p> <p>8 and have a document marked.</p> <p>9 BY MS. RAMSEY:</p> <p>10 Q. Okay. I am handing the witness what</p> <p>11 has been previously marked as Abbott Exhibit 578.</p> <p>12 A. Do you want me to put this away now?</p> <p>13 Q. You can keep it handy. We'll probably</p> <p>14 be looking at it from time to time.</p> <p>15 MS. HEALY SMITH: You don't have one</p> <p>16 more copy handy, do you?</p> <p>17 MS. RAMSEY: No.</p> <p>18 THE COURT REPORTER: Do you want this</p> <p>19 marked again?</p> <p>20 MS. RAMSEY: No, it can stay marked as</p> <p>21 Abbott 578.</p> <p>22 THE COURT REPORTER: Oh. Okay.</p>	<p>1 Q. Do you know whether Delaware Medicaid</p> <p>2 was provided with these pharmacy bulletins prior</p> <p>3 to your arrival in 1993?</p> <p>4 MS. HEALY SMITH: Objection.</p> <p>5 THE WITNESS: My assumption is that the</p> <p>6 manufacturers and labelers have a pretty good</p> <p>7 national list and when they want to mail the</p> <p>8 Medicaid Programs they have a contact for each</p> <p>9 program.</p> <p>10 BY MS. RAMSEY:</p> <p>11 Q. Is that a yes?</p> <p>12 A. What was the exact question again?</p> <p>13 Q. I believe that I asked whether you had</p> <p>14 any knowledge as to whether Delaware Medicaid</p> <p>15 received Medicaid Pharmacy Bulletins prior to</p> <p>16 your arrival.</p> <p>17 A. Other than what I just stated, I would</p> <p>18 say, no, I don't have specific knowledge.</p> <p>19 Q. Okay. So they could have or they might</p> <p>20 not have?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. But you indicated that you did</p>

20 (Pages 346 to 349)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Newark, DE

Page 350	Page 352
<p>1 begin receiving these at some point?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you recall when that was?</p> <p>4 MS. SHUTTEE: Strike that -- I'm sorry.</p> <p>5 I said strike that. That's not what I meant to</p> <p>6 say.</p> <p>7 Excuse me. When you said receiving</p> <p>8 these, did you --</p> <p>9 MS. RAMSEY: Medicaid Pharmacy</p> <p>10 Bulletins.</p> <p>11 MS. SHUTTEE: -- mean these from</p> <p>12 Lederle or these from Parke-Davis or these from</p> <p>13 another provider?</p> <p>14 MS. RAMSEY: Any Medicaid pharmacy</p> <p>15 provider.</p> <p>16 MS. HEALY SMITH: Any Medicaid.</p> <p>17 Thank you very much. Pardon for my</p> <p>18 interruption.</p> <p>19 THE WITNESS: My recollection of</p> <p>20 receiving Medicaid Pharmacy Bulletin goes fairly</p> <p>21 back to when I first started. They were valuable</p> <p>22 publications, but exactly when I started to</p>	<p>1 function and more subject to other facets of</p> <p>2 delivering health care.</p> <p>3 Q. Such as what?</p> <p>4 A. Such as delivery.</p> <p>5 Q. And what about compounding?</p> <p>6 A. Preparation is what's listed here. And</p> <p>7 in some situations preparation may be longer,</p> <p>8 yes.</p> <p>9 I also would disagree with patient</p> <p>10 instruction being part of the dispensing</p> <p>11 application or function for these products. In</p> <p>12 most situations that I am aware of with IV-</p> <p>13 administered drugs, you're going to have a home</p> <p>14 health component, such as a visiting nurse, and,</p> <p>15 therefore, I believe that the charges associated</p> <p>16 with patient instructions would be done onsite at</p> <p>17 the home or the facility where the person was</p> <p>18 receiving the drug.</p> <p>19 Q. So you do agree that there are</p> <p>20 additional costs and services that home IV</p> <p>21 providers would incur versus a traditional retail</p> <p>22 pharmacist dispensing a drug; is that correct?</p>
Page 351	Page 353
<p>1 receive them, I don't know.</p> <p>2 BY MS. RAMSEY:</p> <p>3 Q. Okay.</p> <p>4 A. It would have been in the early to mid-</p> <p>5 '90s.</p> <p>6 Q. Now, the first column, the title is</p> <p>7 home intravenous IV reimbursement is a complex</p> <p>8 issue for Medicaid Pharmacy Programs.</p> <p>9 And then the second paragraph it</p> <p>10 states, because home IV therapy involves a host</p> <p>11 of additional pharmacy services; storage,</p> <p>12 preparation, delivery, patient instruction, et</p> <p>13 cetera, it is generally agreed that it is more</p> <p>14 expensive to dispense this type of medication</p> <p>15 than to dispense other outpatient drugs.</p> <p>16 Did I read that correctly?</p> <p>17 A. You read it correctly.</p> <p>18 Q. And do you agree with that sentence?</p> <p>19 A. No.</p> <p>20 Q. Why not?</p> <p>21 A. Because some of the functions that are</p> <p>22 mentioned are not specific to the dispensing</p>	<p>1 MS. HEALY SMITH: Objection.</p> <p>2 THE WITNESS: Yes. To some degree.</p> <p>3 BY MS. RAMSEY:</p> <p>4 Q. How did Delaware reimburse provider of</p> <p>5 home IV medications --</p> <p>6 MS. HEALY SMITH: Objection.</p> <p>7 BY MS. RAMSEY:</p> <p>8 Q. -- during the relevant time period?</p> <p>9 A. Can you redefine the relevant time</p> <p>10 period?</p> <p>11 Q. Beginning in 1991 and going through</p> <p>12 approximately 2001.</p> <p>13 A. We reimbursed the pharmacy providers</p> <p>14 for the ingredient costs plus a \$3.65 dispensing</p> <p>15 fee.</p> <p>16 Q. Were there any additional -- strike</p> <p>17 that.</p> <p>18 Did Delaware provide any additional</p> <p>19 reimbursement or compensation other than the</p> <p>20 ingredient costs and the \$3.25 dispensing fee?</p> <p>21 A. We reimbursed a dispensing fee of</p> <p>22 \$3.65.</p>

21 (Pages 350 to 353)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Newark, DE

Page 494

1 right once those documents are produced to seek
2 to re-open these depositions.

3 MS. RAMSEY: I believe we can go off
4 the record. Thank you very much, Ms. Denemark.
5 We appreciate your time and patience.

6 THE VIDEOGRAPHER: We're off the record
7 at 3:09.

8 (Deposition concluded at 3:09
9 p.m.)

10

11

12

13

14

CYNTHIA DENEMARK

15

16

17

18

19

20

21

22

Notary Public

Page 495

1 REPORTER'S CERTIFICATE

2 I, Ryan K. Black, RPR, Court Reporter, and
3 Undersigned Commissioner, do hereby certify that
4 personally appeared before me, Cynthia Denemark, the
5 witness, being first duly sworn or affirmed to
6 testify to the truth, the whole truth and nothing
7 but the truth, in answer to the oral questions
8 propounded to Cynthia Denemark by the attorneys for
9 the respective parties, testified as set forth in
10 the foregoing examination.

11 I further certify that before the taking
12 of said examination, the above witness was duly
13 sworn of affirmed, that the questions and answers
14 were taken down stenographically by the said Ryan K.
15 Black, RPR, Court Reporter, Lancaster, PA, approved
16 and agreed to, and afterwards reduced to print by
17 means of computer-aided transcription under the
18 direction of the aforesaid Reporter.

19 In testimony whereof, I have hereunto
20 subscribed my hand this 19th day of December, 2008.

21

22

Ryan K. Black, RPR

57 (Pages 494 to 495)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

EXHIBIT 19

Drake, Deborah HIGHLY CONFIDENTIAL February 19, 2008
San Francisco, CA

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----X

In re: PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE LITIGATION,)

-----X

UNITED STATES OF AMERICA, ex rel.) MDL No. 1456

VEN-A-CARE OF THE FLORIDA KEYS,) Civil Action

INC., vs. ABBOTT LABORATORIES,) No. 01-12257PBS

INC., CIVIL ACTION NO. 06-11337-PBS)

-----X

HIGHLY CONFIDENTIAL TRANSCRIPT

--oOo--

TUESDAY, FEBRUARY 19, 2008

--oOo--

VIDEOTAPED DEPOSITION OF

DEBORAH DRAKE

--oOo--

Reported By: CAROL NYGARD DROBNY, CSR No. 4018

Registered Merit Reporter

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

a2bb6e19-d087-4b6b-ab7d-39afc78a4f7a

Drake, Deborah HIGHLY CONFIDENTIAL February 19, 2008
San Francisco, CA

<p style="text-align: right;">Page 254</p> <p>1 A. Sometimes.</p> <p>2 Q. Did your -- and what did you do to</p> <p>3 achieve that objective, if anything?</p> <p>4 A. My job.</p> <p>5 Q. Okay. Did you ever discuss with your</p> <p>6 Manager going on to be, say, a National Account</p> <p>7 Manager?</p> <p>8 A. Probably, yes.</p> <p>9 Q. And what did you do to pursue that</p> <p>10 objective of becoming a National Account Manager?</p> <p>11 A. Umm --</p> <p>12 MR. COLE: I'll object to the form.</p> <p>13 THE WITNESS: Just my job and just</p> <p>14 talking.</p> <p>15 BY MS. YOUNTS:</p> <p>16 Q. Okay. And you said you never took part</p> <p>17 in the Contract Marketing Internship Program?</p> <p>18 A. That's correct.</p> <p>19 Q. Did you ever receive any training in</p> <p>20 how Abbott products were reimbursed by third</p> <p>21 party payers?</p> <p>22 A. No.</p>	<p style="text-align: right;">Page 256</p> <p>1 to influence how and where patients are treated."</p> <p>2 Do you recall receiving any training or</p> <p>3 discussing in any formal Abbott meeting</p> <p>4 concerning how reimbursement continues to</p> <p>5 influence how and where patients are treated?</p> <p>6 A. I don't.</p> <p>7 Q. As a member of the Alternate Site Sales</p> <p>8 Force was it part of your job to stay aware of</p> <p>9 current market trends in the alternate site</p> <p>10 market?</p> <p>11 MR. COLE: Object to the form.</p> <p>12 THE WITNESS: What do you mean by</p> <p>13 "current market trends"?</p> <p>14 BY MS. YOUNTS:</p> <p>15 Q. Did you pay attention to what products</p> <p>16 -- customers were interested in purchasing?</p> <p>17 Did you pay attention to what products</p> <p>18 your competition was beginning to offer but how</p> <p>19 that was affecting your sales?</p> <p>20 A. Umm -- yes, I paid attention to -- umm</p> <p>21 -- the products that my customers were requesting</p> <p>22 and -- and what they needed.</p>
<p style="text-align: right;">Page 255</p> <p>1 MS. YOUNTS: Okay. I'm going to turn</p> <p>2 your attention back to a document that we looked</p> <p>3 at previously, and I have to double check what it</p> <p>4 was marked as.</p> <p>5 BY MS. YOUNTS:</p> <p>6 Q. Okay. Directing your attention back to</p> <p>7 an exhibit that was previously marked as Drake</p> <p>8 Exhibit 6, which is a Power Point presentation,</p> <p>9 and you may have already testified to this, and</p> <p>10 I'm sorry if we go over some of this again, but</p> <p>11 just take a moment to review that document and</p> <p>12 tell me if -- if you have seen this document or</p> <p>13 documents similar to this before.</p> <p>14 A. I don't recall.</p> <p>15 Q. Okay. At your national sales meetings</p> <p>16 do you recall -- umm -- having discussions, for</p> <p>17 instance, about current market trends?</p> <p>18 A. I don't recall.</p> <p>19 Q. Okay. Turn your attention to the page</p> <p>20 that's been Bates stamped ADT-DOJ-E 0007255.</p> <p>21 Under "Current Market Trends" there's a</p> <p>22 bullet point that says "Reimbursement continues</p>	<p style="text-align: right;">Page 257</p> <p>1 Q. Okay. And did you pay attention to</p> <p>2 trends in pricing of those products?</p> <p>3 A. Sometimes.</p> <p>4 Q. Did you pay attention to trends in --</p> <p>5 umm -- reimbursement for those products by third</p> <p>6 party payers?</p> <p>7 A. No.</p> <p>8 Q. Did you attempt in any way to -- umm --</p> <p>9 understand reimbursement trends of the products</p> <p>10 you were marketing, the products you were selling</p> <p>11 to your customers?</p> <p>12 MR. COLE: Object to the form.</p> <p>13 THE WITNESS: What do you mean by</p> <p>14 "trying to understand"?</p> <p>15 BY MS. YOUNTS:</p> <p>16 Q. Did you try to stay current with</p> <p>17 changes in the reimbursement rates for the</p> <p>18 various products that you were selling?</p> <p>19 A. No. I had 2,000 products, and I was</p> <p>20 not going to be able to keep up with that.</p> <p>21 Q. Okay.</p> <p>22 A. And I don't sell based on that.</p>

65 (Pages 254 to 257)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

EXHIBIT 20

Atlanta, GA

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

-----X

IN RE: PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE LITIGATION) MDL No. 1456

-----) Civil Action

THIS DOCUMENT RELATES TO:) No. 01-12257-PBS

United States of America, ex. rel.) Hon. Patti Saris

Ven-a-Care of the Florida Keys,)

Inc., v. Abbott Laboratories, Inc.,)

Civil Action No. 06-11337-PBS; and)

United States of America, ex. rel.) VIDEOTAPED

Ven-a-Care of the Florida Keys,) DEPOSITION OF

Inc., v. Dey, Inc., et. al., Civil) THE GEORGIA

Action No. 05-11084-PBS; and United) DEPARTMENT OF

States of America, ex. rel.) COMMUNITY HEALTH

Ven-a-Care of the Florida Keys,) by JERRY

Inc., v. Boehringer Ingleheim) DUBBERLY

Corp. et. al., Civil Action)

No. 07-10248-PBS.) DECEMBER 15, 2008

-----X

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Atlanta, GA

Page 314	Page 316
<p>1 submits a claim.</p> <p>2 A. That is correct.</p> <p>3 Q. Mr. Robben asked you some questions</p> <p>4 about the interplay between the -- the</p> <p>5 reimbursement of ingredient costs and the</p> <p>6 reimbursement for dispensing costs.</p> <p>7 Do you remember those questions, sir?</p> <p>8 A. Yes.</p> <p>9 Q. And I believe you said that -- that the</p> <p>10 Georgia Medicaid program understood that -- that</p> <p>11 they were providing a -- a profit margin to</p> <p>12 providers in reimbursing them for the ingredient</p> <p>13 costs; is that right?</p> <p>14 MR. LAVINE: Object to form.</p> <p>15 A. Yes. I acknowledged that there was</p> <p>16 profit margin in the current ingredient cost</p> <p>17 formula.</p> <p>18 Q. (By Mr. Cole) And that if -- if that</p> <p>19 margin were to be eliminated, then Georgia would</p> <p>20 have to pay a higher dispensing fee to providers</p> <p>21 to make up for the lost margin on the ingredient</p> <p>22 cost side; is that fair?</p>	<p>1 health or for long-term care or any other</p> <p>2 provider.</p> <p>3 We may review that, but it -- it would</p> <p>4 actually be an additional exercise.</p> <p>5 Q. Going back to the let's say mid to late</p> <p>6 '90s time period when the dispensing fee paid by</p> <p>7 Georgia Medicaid was roughly in the \$4 to \$4.63</p> <p>8 range, do you believe that the dispensing fee</p> <p>9 paid by Georgia Medicaid during that time frame</p> <p>10 was adequate to cover pharmacies' dispensing</p> <p>11 costs?</p> <p>12 A. No.</p> <p>13 Q. And in the home infusion setting -- if</p> <p>14 at that level -- if -- if the \$4.63 was not</p> <p>15 adequate to cover a retail pharmacy's dispensing</p> <p>16 costs, then I assume you would agree with me that</p> <p>17 it certainly did not cover the dispensing costs</p> <p>18 of a home health pharmacy or some other pharmacy</p> <p>19 that administered prescriptions in the home</p> <p>20 infusion setting.</p> <p>21 MR. SULLIVAN: Object to the form.</p> <p>22 A. Agreed.</p>
Page 315	Page 317
<p>1 MR. LAVINE: Object to form.</p> <p>2 A. That's fair.</p> <p>3 Q. (By Mr. Cole) And would that approach</p> <p>4 apply even more in the home infusion setting</p> <p>5 where you have pharmacies incurring even greater</p> <p>6 dispensing costs?</p> <p>7 MR. SULLIVAN: Object to form.</p> <p>8 A. No. That equation that we spoke about</p> <p>9 was only looking at the acquisition cost of the</p> <p>10 drug, not the -- the overhead.</p> <p>11 Q. (By Mr. Cole) What do you mean by</p> <p>12 that?</p> <p>13 A. When we were talking about the fact</p> <p>14 that there was margin in the ingredient cost of</p> <p>15 the drug, the cost by which the pharmacy</p> <p>16 purchased the drug -- when you're talking --</p> <p>17 you're talking about an additional cost to</p> <p>18 dispense.</p> <p>19 So changing the ingredient cost and</p> <p>20 getting that more in line with the actual</p> <p>21 acquisition cost would not necessarily mean that</p> <p>22 we would adjust and make a differential for home</p>	<p>1 Q. (By Mr. Cole) Is it fair to say, Mr.</p> <p>2 Dubberly, that in assessing whether to increase</p> <p>3 the dispensing fee, it has been the policy of the</p> <p>4 Georgia Medicaid program to consider the margin</p> <p>5 on ingredient cost?</p> <p>6 MR. LAVINE: Object to form.</p> <p>7 A. It's been the practice.</p> <p>8 Q. (By Mr. Cole) And there's nothing</p> <p>9 wrong with that practice as -- as far as you are</p> <p>10 aware; is that fair?</p> <p>11 MR. LAVINE: Object to form.</p> <p>12 Q. (By Mr. Cole) Did you answer that</p> <p>13 question? I'm sorry. If you did --</p> <p>14 A. No.</p> <p>15 Q. -- I couldn't hear it on the</p> <p>16 speakerphone.</p> <p>17 A. No. I was trying to -- to reassess the</p> <p>18 -- the language of your question.</p> <p>19 Is it possible to restate it?</p> <p>20 Q. Well, earlier you testified that -- you</p> <p>21 know, that the Georgia Medicaid program obviously</p> <p>22 complies with -- in the day-to-day operation of</p>

80 (Pages 314 to 317)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

Atlanta, GA

Page 398

Page 400

1 Q. And this is my last question, sir: Are
2 you aware of any such statements before the fall
3 of 2007 by HCFA that either criticized or
4 prohibited the practice of overcompensating
5 providers on the ingredient costs while they
6 undercompensated providers for dispensing costs?

7 MR. LAVINE: Object to form.

8 A. None that expressly prohibited or
9 admonished.

10 MR. COLE: Thank you, sir. I have
11 nothing further.

12 MR. SULLIVAN: Can I go?
13

14 EXAMINATION

15 BY MR. SULLIVAN:

16 Q. I want to clarify something about a
17 statement you made earlier today and that your
18 lawyer repeated earlier today in an objection.

19 Is it correct to say that the Georgia
20 Department of Community Health has taken no
21 position on any issue in the case we're here on
22 today?

Page 399

1 MR. ROBBEN: Object to the form.

2 A. That is true.

3 MR. SULLIVAN: That's all I have.

4 THE VIDEOGRAPHER: This is the end of
5 tape No. 7. Going off the record at 6:48 p.m.
6 (Deposition concluded at 6:48 p.m.)
7
8
9

10
11
12
13
14 _____
15 JERRY DUBBERLY

16 SUBSCRIBED AND SWORN TO

17 before me this ____ day
18 of _____, A.D. _____.

19
20 _____
21 Notary Public
22

1 CERTIFICATE

2 GEORGIA:

3 COBB COUNTY:

4 I hereby certify that the foregoing
5 deposition was reported, as stated in the
6 caption, and the questions and answers
7 thereto were reduced to the written page
8 under my direction; that the foregoing
9 pages 1 through 399 represent a true and
10 correct transcript of the evidence given.
11 I further certify that I am not in any way
12 financially interested in the result of
13 said case.

14 Pursuant to Rules and Regulations of
15 the Board of Court Reporting of the
16 Judicial Council of Georgia, I make the
17 following disclosure:

18 I am a Georgia Certified Court
19 Reporter. I am here as an independent
20 contractor for Huseby, Inc.

21 I was contacted by the offices of
22 Huseby, Inc. to provide court reporting
23 services for this deposition. I will not
24 be taking this deposition under any
25 contract that is prohibited by O.C.G.A.
26 15-14-7 (a) or (b).

27 I have no written contract to
28 provide reporting services with any party
29 to the case, any counsel in the case, or
30 any reporter or reporting agency from whom
31 a referral might have been made to cover
32 this deposition. I will charge my usual
33 and customary rates to all parties in the
34 case.

35 This, the 21st day of December,
36 2008.

37
38 JENNIFER D. HAMON, CCR-B-2287
39 My Commission Expires
40 January 27th, 2010.

101 (Pages 398 to 400)

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com